

J5FAAKOU1

Jury Trial

1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK  
3 -----x

4 UNITED STATES OF AMERICA

5 v.

17 CR 417 (AKH)

6 ALI KOURANI,

Jury Trial

7 Defendant.  
-----x

8 New York, N.Y.  
9 May 15, 2019  
10 10:00 a.m.

11 Before:

12 HON. ALVIN K. HELLERSTEIN

13 District Judge

14  
15 APPEARANCES

16 GEOFFREY S. BERMAN  
17 Interim United States Attorney for the  
18 Southern District of New York  
19 AMANDA L. HOULE  
20 EMIL J. BOVE III  
21 Assistant United States Attorneys

22 ALEXEI SCHACHT  
23 Attorney for Defendant

24 ALSO PRESENT: KERI SHANNON, Special Agent FBI  
25 MARGARET SHIELDS, Paralegal, US Attorney's Office

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Closing Statement - Bove

1 (Trial resumed; Jury present)

2 THE COURT: Good morning, members of the jury. Be  
3 seated please.

4 Today we're going to hear summations and then after  
5 the summations, my instructions on the law. The summations  
6 will be given first by the government and Mr. Bove will do  
7 that. Then by Mr. Schact for the defense and then Mr. Bove has  
8 a short rebuttal that he is allowed and that will close the  
9 summations. After that I will deliver my instructions. Of  
10 course, we'll have breaks and lunch break throughout.

11 The summations by the lawyers are not evidence.  
12 They're their version, their belief in how the evidence hangs  
13 together and what it proves or doesn't prove. Listen to the  
14 lawyers because they've lived this case. They don't have any  
15 personal knowledge. They're trying to remind you what you  
16 heard in the evidence that came into this case.

17 So, Mr. Bove will start.

18 MR. BOVE: Thank you, judge.

19 Good morning, ladies and gentlemen.

20 This is a case about what happens before a bomb goes  
21 off, before shots are fired, before an attack here begins.  
22 This case is about attack planning, things like hostile  
23 surveillance, intelligence collection, watching, preparing.

24 The defendant was a sleeper cell operative, a  
25 terrorist and a spy. He was here fighting a secret jihad, a

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1 shadow war for Hezbollah in the Islamic Jihad Organization.  
2 Hezbollah spent years grooming the defendant for this jihad.  
3 That began all the way back in 2000 when he attended a 45 day  
4 Hezbollah boot camp. There he learned things like military  
5 tactics and how to shoot machine guns. But something  
6 unexpected happened that same year. Israel withdrew from  
7 Lebanon and so the defendant's skills on the battlefield were  
8 not needed at that time.

9           What happened? The defendant and his family turned  
10 their sights toward the United States. The defendant has  
11 described his family as the Bin Ladens of Lebanon. His father  
12 came here in 2001. He entered the country illegally and then  
13 he entered into a sham marriage. The defendant used that sham  
14 marriage to get a visa and he came here in 2003. When he got  
15 here he enrolled at City University of New York, CUNY, and he  
16 started taking course work towards a degree in my medical  
17 engineering that he would never use other than as a cover, a  
18 way to try to suggest that he was a regular guy living the  
19 American dream instead of a terrorist sent here by Hezbollah to  
20 attack that dream.

21           The defendant went home for the summer in 2006. And  
22 when he was there he witnessed the outbreak of a new war  
23 between Lebanon and Israel. He was still a trained soldier but  
24 he chose not to fight. At that point the defendant and his  
25 family were too important to Hezbollah, so he came back to the

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United States. He continued to prepare for his jihad. He continued to study. Now, Hezbollah declared that it won that war in 2006 and they also took note of the defendant's discipline and his skills. He was smart. His emerging cover was strong, and his ties to the United States were valuable. So, in 2008 Hezbollah recruited the defendant into the Islamic Jihad Organization, the IJO. Hezbollah's Black Ops Unit, responsible for things like foreign intelligence collection, the planning and execution of terrorist attacks.

Now, when the defendant joined the IJO something else happened that year, the leader of the organization was murdered. His name was Imad Mughnayeh. He was one of Hezbollah's most accomplished terrorists at that time.

So that development made the defendant's new mission with the IJO even more important because Hezbollah and the IJO wanted revenge, vengeance. They wanted to retaliate. The defendant embraced that new urgency. The IJO trained him how to use military grade weapons, the weapons that you saw in the cart here in the courtroom during the trial, because he had to be deadly for this new mission.

But it was a little different now. When the defendant joined the IJO he was promoted from soldier to spy. It was now his mission to come to the United States, this city and set up a new front for Hezbollah's global terror campaign. And so the IJO taught the defendant new things, things like how to collect

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1 intelligence, how to conduct surveillance, how to resist  
2 interrogation if he had to.

3 After the defendant learned those things his first  
4 mission was to deepen his cover in the United States to make it  
5 stronger. And so what did he do? He came here and he applied  
6 for U.S. citizenship. He naturalized based on lies and fraud.  
7 What next? He got a U.S. passport, a new passport with blank  
8 pages that hid his prior travel to Lebanon so it would be less  
9 suspicious and he wouldn't be asked about it when he traveled  
10 through airports.

11 After the defendant did those things, after he became  
12 a citizen, after he got the passport he lurked in the shadows  
13 here for years. That is how a sleeper cell works. And that is  
14 what the defendant did. He was here, ready, ready to  
15 participate in acts of violence for the IJO, ready to spill  
16 blood in the name of Hezbollah in this terrorist organization.  
17 And he was here living undercover but he didn't sit idly. The  
18 defendant continued to go back to Lebanon and meet with IJO  
19 personnel. And there during those meetings he got taskings,  
20 missions, assignments and then he came back. And he did things  
21 like study the security procedures at airports, collect  
22 information, do surveillance on government buildings. He  
23 identified weapons supplies so that IJO operatives could get  
24 guns to carry out attacks.

25 The things that the defendant did for Hezbollah make

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1 it clear that he understood the enormous magnitude of what this  
2 terrorist organization had in mind. There are a lot of  
3 government buildings in New York City. The defendant chose 26  
4 Federal Plaza. Across the street from where you are sitting  
5 right now, one of the largest federal buildings in the country,  
6 a federal building with a daycare center and a playground  
7 outside. The defendant chose armories, places where the  
8 military stores weapons and equipment to be used to protect the  
9 city in response to a terrorist attack. The defendant chose  
10 places where classified information is stored and he also chose  
11 places where people work to protect infrastructure that is so  
12 critical and so critical to this city, things like bridges,  
13 tunnels, train stations, utilities.

14           Ladies and gentlemen, this wasn't an accident. These  
15 targets were not random. The defendant was a sophisticated  
16 terrorist and he was helping the IJO position itself to conduct  
17 a crippling attack here in the city.

18           Now, these things that the defendant did for Hezbollah  
19 make him guilty of the charges in the indictment. And you know  
20 that he did those things. You know that from his laptop. You  
21 know it from his e-mail accounts. You know it from the  
22 Facebook records. You know it from the evidence that was  
23 seized from the defendant's apartment. You also know that the  
24 defendant did these things because he confessed five separate  
25 times. In 2017 the defendant got a lawyer to set up some

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meetings with the FBI at Seton Hall. He requested that.

Now, we're going to talk today about some of the reasons that drove the defendant to do that. But let's be clear, this man is no fool. He set those meetings up intentionally. He met with the FBI voluntarily and he did that as part of a calculated to try and get some things that he wanted. And the bottom line is this. During five meetings at Seton Hall the defendant admitted to doing things for Hezbollah and for the IJO that make him guilty and the agents who conducted those interviews that came to this trial and they testified at that witness stand credibly and consistently about what the defendant admitted to at Seton Hall. And that is a piece of the evidence here in this courtroom for you to consider. It is a powerful piece of evidence that shows you that the defendant is guilty. But it's just one part of the evidence, ladies and gentlemen.

This is an entry from a document seized from the defendant's apartment. This is Government Exhibit 222. And there's no dispute at this trial that the defendant wrote this. I need a cover up. The fact that the defendant wrote this down before he was arrested shows you that he understood he was thinking about coming up with a coverup for his egregious crimes against the United States. And you can bet that right now the defendant regrets having committed this thought to writing, for sure. Because this was a mistake on his part, a

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1 slip up an error in the operational discipline that once made  
2 him a star, a terrorist star in Hezbollah and the IJO. But  
3 even trained spies make mistakes and this was a slipup and now  
4 it's a piece of evidence here at this trial and is another part  
5 of reason that you know he is guilty.

6 Let's be clear. The defendant doesn't have any burden  
7 at this trial. He doesn't need to do or say anything. The  
8 burden of proof is always on the government but this is a piece  
9 of evidence, ladies and gentlemen. And the fact that the  
10 defendant wrote this down, it shows you that he knew before he  
11 was arrested that what he had done was wrong and criminal and  
12 illegal. And the fact that the defendant wrote this down  
13 before he was arrested, it means that you should be deeply  
14 skeptical of efforts by the defense to try to explain away five  
15 confessions corroborated by electronic evidence and items  
16 seized from the defendant's apartment.

17 Now, this is one of the things that Mr. Schact said to  
18 you during opening statements. He made an argument. He argued  
19 that there is not any shred of evidence other than some  
20 statements that the defendant made. Mr. Schact said that to  
21 you on the first day of the trial.

22 Now, look, again, the defense has no burden.  
23 Mr. Schact doesn't have to say anything. But you're entitled to  
24 scrutinize arguments that are made to you, to think about  
25 whether they make any sense. So, is this right? Is this an

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1 accurate argument about what happened at this trial? No.

2 Absolutely, not.

3 Now let's be clear. Hezbollah trained the defendant  
4 to operate in the shadows. The IJO taught the defendant to be  
5 careful. But he made mistakes along the way, slipups like the  
6 one we've already talked about, errors in operational  
7 discipline that left a trail. So, that evidence is here for  
8 you to consider.

9 Let's talk about some of the types of evidence. This  
10 is the defendant's laptop seized from his apartment on the day  
11 of his arrest marked as Government Exhibit 210. And you know  
12 that this laptop contains evidence of what the defendant was  
13 doing on the Internet. He was looking at Hezbollah propaganda.  
14 He was researching Hezbollah military tactics. And you know  
15 that he used this laptop to carry out some of his activities  
16 for the IJO.

17 You also know from the forensic analysis of this  
18 laptop that the defendant tried to delete some of these things.  
19 He tried to delete them because he realized that he had made  
20 mistakes. It wasn't consistent with his cover identity as a  
21 biomedical engineer with a side business in counterfeiting to  
22 be sitting at home hold up in the apartment looking at  
23 Hezbollah propaganda and researching government buildings. So,  
24 this is one piece of the evidence that we're going to talk  
25 about today.

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1           This is another piece, ladies and gentlemen. This is  
2 Government Exhibit 902. This is a document that reflects  
3 additional internet activity by the defendant. This one  
4 instead of being tied to the laptop is tied to the defendant's  
5 e-mail account, an account in his own name, Ali.M.kourani. And  
6 you know from this document that it reflects additional  
7 research about Hezbollah additional reading an consumption of  
8 Hezbollah propaganda and additional activities on behalf of the  
9 IJO.

10           In this document this evidence tied to the e-mail  
11 account is in many ways separate from the laptop because you  
12 can get on your e-mail away from your computer. Think about  
13 how you use your e-mail in our everyday life on your phone.  
14 So, this is basically a separate set, a separate source of  
15 evidence about what the defendant was doing on the internet  
16 that speaks to his intent and his motivations and what was  
17 driving him.

18           This is another category of evidence. These are  
19 Facebook records. We looked at these early in the trial. And  
20 you'll recall from the testimony of Mr. Donaldson that the  
21 defendant deleted his chats, deleted his chats with members of  
22 Hezbollah that went on in 2011. He did that because he knew  
23 they were incriminating. Again, more cracks in his cover.  
24 Biomedical engineers are not chatting with terrorists in  
25 Lebanon. So, he deleted those messages. And I am going to

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1 show you today what else the defendant was doing at the time in  
2 2011 when he was chatting with Hezbollah members about things  
3 he didn't want you to see.

4 This is Government Exhibit 222. These are the notes  
5 that I've already referred to seized from the defendant's  
6 apartment on the day of his arrest. In addition to that entry  
7 I need a coverup. There's a reference in the top right of this  
8 document to the IJO, another acronym, another alias for that  
9 terrace organization.

10 The defendant also wrote down, in this document he  
11 wrote down on paper some of the things that he did for the IJO.  
12 There's entries in here that we are going to look at today  
13 about his training and about his missions. This is another  
14 piece of devastating evidence against this defendant.

15 This is Government Exhibit 219, cash. You'll remember  
16 from the first day of trial, Special Agent Ganci explained  
17 where this came from. Do you remember? It was packed in a  
18 suitcase, a suitcase with the defendant's identification,  
19 documents, a suitcase stuffed in a closet by the front door of  
20 the apartment. Why? This was a go-back, ladies and gentlemen.  
21 This is the kind of thing that a trained spy keeps so that he  
22 can flee on a moment's notice. This is not the kind of thing  
23 that a biomedical engineer keeps. That is another reason that  
24 you know that the defendant is guilty because this is not  
25 normal behavior. This is the behavior of a man who is a

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1 trained spy for Hezbollah and who in May and June 2017 he knew,  
2 he knew that what he had tried to do with the FBI at Seton Hall  
3 had failed and he knew that he was going to be held accountable  
4 for his crimes against the United States. And that's what this  
5 trial is really about, ladies and gentlemen.

6 So, this closing statement is my opportunity to walk  
7 you through the evidence, to talk about what's in those records  
8 that I've just looked at because it came in in bits and pieces  
9 during the trial. So, this is my chance to talk with you about  
10 how it all fits all together and how it shows you that the  
11 defendant is guilty, five confessions, the laptop, e-mail  
12 accounts, Facebook records, things seized from his apartment.

13 Before I get started, I want to talk a little bit  
14 about the charges in the case and I'm going to come back to  
15 this at the end. And please remember that when the lawyers are  
16 done talking today, Judge Hellerstein is going to give detailed  
17 instructions about the law and the elements in these charges.  
18 Here is an overview.

19 There are eight counts in the indictment and they  
20 basically fit into three categories. This first category  
21 relates to crimes providing support and services to Hezbollah.  
22 And those are somewhat technical terms that the judge is going  
23 to explain to you but it basically means this, ladies and  
24 gentlemen. The defendant is charged with taking steps to help  
25 further Hezbollah's terrorist objectives. They're not talking

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about humanitarian or Hezbollah's politics. These are crimes. These are charges that relate to what the defendant did to facilitate terrorist activities in the IJO.

The second category of charges is in the middle of the screen. This category relates to military training and weapons, a part of the defendant's conduct that made him even more dangerous, made it even more likely that someone would be harmed in connection with what he was doing.

THE COURT: This is not an exhibit, ladies and gentlemen. It's not an exhibit in the case. It's part of the summation. It's an illustration Mr. Bove's created and using in his summation.

MR. BOVE: Thank you, judge.

So, Counts Three and Four relate to receiving military training from Hezbollah which you know happened multiple times. And the reason that that charge is here for you to consider is that a terrorist who gets formal military training is even more dangerous.

Count Five relates to the fact that the defendant worked with others to use, carry and possess machineguns and what are called under the law destructive devices, which is a fancy term for arms and grenades. And this charge relates to the fact that after the defendant's training he possessed those weapons and other people possessed those weapons. And as a result of the defendant's training by the IJO, he understand

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1 that he was part of an organization that was working to use  
2 weapons like that in connection with its terrorist activities.

3 The last category is on the right side of the screen  
4 and it's really one count, naturalization fraud. It's a  
5 serious thing to be a citizen of the United States. It's a  
6 serious thing to apply and obtain citizenship. This count  
7 relates to the fact that the defendant at the direction of a  
8 terrorist organization became a U.S. citizen to facilitate the  
9 terrorist activities.

10 So, now let's get down to the evidence. And here's a  
11 little roadmap for what I'm hoping to cover this morning. I'm  
12 going to start with some background about Hezbollah and its  
13 terrorist unit, the Islamic Jihad Organization. Then we're  
14 going to talk about the evidence that Hezbollah trained and  
15 groomed the defendant, prepared him for this jihad.

16 Next, we'll talk about his promotion, his recruitment  
17 to the Islamic Jihad Organization from soldier to spy. We're  
18 going to talk about the ways that the defendant was trained by  
19 the IJO, things that they taught him so that he would be a more  
20 effective terrorist spy and sleeper be operative. We'll talk  
21 about the trade crafts that he used. Those are spy techniques  
22 that you've seen in the evidence and we'll talk about those  
23 today. Then we're going to talk about some of the things the  
24 defendant did for the IJO, his missions, things like the  
25 surveillance that I've already mentioned, watching security

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1 procedures at airports. And then we'll talk a little bit at  
2 the end about the investigation and what brought us here.

3 So, let's start with Hezbollah and the Islamic Jihad  
4 Organization. This evidence was provided to you at the trial  
5 to help provide some context for the objective that Hezbollah  
6 and the IJO and also to help you understand the things that  
7 were personally motivating the defendant as he carried out  
8 these activities here in the United States.

9 You heard from Dr. Levitt, this history is long and  
10 it's complicated and I'm just going to touch on a few of its  
11 features. I want to be clear, again, this is not about  
12 politics. Trials are about evidence. Trials are about doing  
13 justice. We're here to think about the evidence of the  
14 defendant's participation in terrorist activities. I'm going  
15 to focus on Hezbollah's terrorist objectives and the same  
16 objectives of the IJO.

17 So, let's start with some basics. The parties have  
18 agreed, they've stipulated that since 1997 Hezbollah has been  
19 designated a foreign terrace organization by the U.S.  
20 government. The reason that we offer that stipulation is that  
21 it's actually one of the elements for one of the crimes that  
22 the U.S. government has formally designated Hezbollah. So,  
23 that's been true since 1997.

24 And just to pause here as I go through this, all the  
25 exhibits that are on the screen are referenced for your notes

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1 in the bottom right corner in bold. And if there are parts of  
2 transcript on the screen, those citations are down there as  
3 well.

4 So, Hezbollah obviously started long before 1997. You  
5 heard that there were terrorist attacks in the early 1980s.  
6 Hezbollah really emerges on the scene in 1985 through this open  
7 letter to the public. One of the things that he talked about  
8 is Hezbollah's stated objective right from the beginning  
9 targeting the United States since 1985. How did they frame  
10 that? By quoting Ayatollah Khomeini, the former supreme leader  
11 of Iran, supreme leader at the time of this letter. And this  
12 is what he had said and this is the 1985 letter.

13 The United States is the root of all evil. And when  
14 you join an organization with an objective like that and you  
15 try and further its mission, this is what we're talking about,  
16 ladies and gentlemen, targeting the United States. You are  
17 going to see that the defendant's internet history tracks most  
18 of it. He was excited about participating in it and it's  
19 evidence of what was driving him when he did these things.

20 Let's be clear. There have been some  
21 cross-examination questions about whether it's illegal to  
22 lookup some things on the internet or the fact that this stuff  
23 was publically available. The defendant is not charged with  
24 illegal use of the internet.

25 Why does this evidence matter? Because it gives you a

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1 window into what was going on in the defendant's hoed. We  
2 don't have a mind reader hear. This shows you what he was  
3 doing. And think about the context. The defendant is leaving  
4 that apartment. He is going out in his life under this cover,  
5 the biomedical engineer cover, the counterfeit clothing cover.  
6 It takes discipline. It takes restraint. You have to avoid  
7 slipups that will lead to more scrutiny by law enforcement.

8 Then he comes back into the apartment after what must  
9 have been a hard day's work to just continue to try and hide  
10 these things as you are doing things like collecting  
11 intelligence and conducting surveillance. He goes on the  
12 internet and he is reading about things like this to help him  
13 stay focused and committed. So, here on the screen you can see  
14 that in part of his internet history he has read about  
15 Ayatollah Khomeini? Those are two separate YouTube videos that  
16 he is watching.

17 The 1985 letter from Hezbollah also talked about three  
18 themes, three core features from members who are committed to  
19 this part of the mission targeting the United States, Jihad  
20 Mujahed and Martyr. And Dr. Levitt explained what those terms  
21 mean. Jihad is basically war, armed conflict. And that is  
22 Hezbollah, for purposes of this trial and what we are talking  
23 about, that's the objective that we're talking about.  
24 Terrorist activity through Jihad, through war.

25 And who are the Mujahedeen? They are those warriors.

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1 They are those terrorists. What is martyrdom in this context?  
2 Martyrdom is to die in the service of Hezbollah.

3 The defendant's internet history makes clear that he  
4 was obsessed with these -- and he was here living a double life  
5 in the United States. These were the things that drove him,  
6 that motivated him to earn that honor from Hezbollah of being a  
7 martyr, to fight, to pursue Hezbollah's objectives in Jihad.  
8 And so these are some examples of that evidence from the  
9 laptop, YouTube video. Hezbollah soldiers and the martyrs of  
10 Hezbollah.

11 Second one, Hezbollah soldier two, posted video about  
12 another martyr.

13 Finally, a YouTube video, Hezbollah Islamic resistance  
14 Mujahed martyrs. These are the things that the defendant had  
15 in his mind as he was planning and preparing and helping the  
16 IJO get ready for an act.

17 Let's talk a little bit about Hezbollah's structure.  
18 You heard from Dr. Levitt that the secretary general of  
19 Hezbollah, Hassan Nasrallah. His picture is here on the screen  
20 on the left. The defendant is very familiar with Nasrallah.  
21 You saw a video yesterday during Ms. Shields' testimony. This  
22 is that video. It's the second row here on the screen.

23 Ladies and gentlemen, that's not a video about  
24 humanitarian aid. These are soldiers in that video. If you  
25 could take a look at the unallocated clusters. That's the part

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of the computer where data goes after it's deleted. So, the defendant watched these videos and he understood what they would show about his state of mind and his intent. So, then he tried to get rid of them. So, both these videos about Hezbollah found in the unallocated space of the laptop he tried to open.

The Islamic Jihad Organization is a unit within Hezbollah. So, there is a stipulation on the screen that we're in agreement on that. The IJO is Hezbollah for purposes of this trial.

On the screen here are two of the former leaders of the Islamic Jihad Organization, Imad Mughniyah, who I already mentioned, who killed in 2008 around the time of defendant -- and then Mustafa Badreddine, another leader of this terrorist group.

I think it's really important as you are thinking about what the IJO was doing, what was its role within Hezbollah. The IJO is a component of Hezbollah's Jihad council, a group of leaders convened to think about how to fight and commit acts of terrorism. The IJO's purpose is to carry out terrorism outside of Lebanon, to go outside of the country, to fight elsewhere. And so the defendant as a member of the IJO was sent here as I said to help plan terrorist attacks in the United States. Hezbollah undertakes the concerted effort to get propaganda out to recruit new fighters.

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1                   Mr. Schact was asked questions about other things that  
2 they do. I've referenced them already. This trial is not  
3 about that. And the propaganda on the defendant's laptop is  
4 not about that. This is the video that we looked at yesterday.  
5 On the left side of the screen in the top left is a logo of  
6 Mughniyah. Mughniyah is a terrorist. He is a killer. This is  
7 not about politics. This is about Hassan Nasrallah promoting  
8 terrorism and idealizing and lauding the things that Mughniyah  
9 did. There's the Hezbollah flag behind Nasrallah. And then  
10 there's the Al-Manar logo. Al-Manar is the formalized  
11 component of Hezbollah to get out terrorist propaganda.

12                  This is a stipulation that's in evidence. And this  
13 gives you a sense of the way that Hezbollah is focused on  
14 recruiting and grooming fighters like the defendant. Al-Manar  
15 and Al-Nour are media arms of Hezbollah. Al-Manar is also a  
16 specially designated global terrorist entity in the United  
17 States.

18                  So, when the defendant is watching videos like this,  
19 let's be clear, what he is doing is consuming propaganda of  
20 terrorists to motivate himself to stay disciplined as he  
21 continues to do things for the IJO.

22                  In terms of history I've already referenced the 2006  
23 war. I'm just going to go through a couple of events relevant  
24 for you to think about because the defendant was either  
25 affected by them or in some ways participated. The 2006 war was

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1 between Israel and Lebanon. And the defendant admitted that he  
2 was in Lebanon for part of that war in July. He left and came  
3 back and continued to train.

4 Now to be clear, if Hezbollah had wanted the defendant  
5 to fight in that war, he was ready. He had trained in 2000 and  
6 he would have. But he came back and continued to develop his  
7 cover. But his internet activity reflects that both he and the  
8 people that he was working with were obsessed with this  
9 conflict. So here are a few examples.

10 June 29, 2008, a search for Winograd report. Dr.  
11 Levitt told you what that was. That is a Israeli document by  
12 former supreme court judge that is basically an analysis of  
13 that war. And it talks about some of the things that from  
14 their perspective Israel did well and things they did not do so  
15 well. They were failures. So he is reading about that to  
16 study it, to think about Hezbollah military tactics.

17 Then also on the screen here are other documents of  
18 things he was reviewing about that war. Hezbollah tactics  
19 during the July war, Hezbollah convoy in Beirut. The defendant  
20 was very focused on this particular conflict partly because he  
21 lived there and if took place in part of south Lebanon where he  
22 grew up. But this is one of the things that motivated him.

23 As I've already said, in February 2008, the leader of  
24 the IJO at the time was murdered. Now, there are some  
25 documents on the screen here and we talked about them during

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1 the testimony of Gary Baptiste. They are newspaper articles to  
2 be clear. These are newspaper articles about cables, formal  
3 communications that had been classified and had been leaked.  
4 There were objections and questions about why does this matter  
5 that he is reviewing these newspaper articles? Well, here's  
6 the answer.

7 These cables were sent around the time that Mughnayyah  
8 was killed and the defendant was reading these cables to try  
9 and understand who was responsible. Dr. Levitt explained that  
10 it was a joint endeavor by the U.S. and Israel. This was  
11 another one of those things that motivated the defendant to be  
12 here carrying out terrorist attacks.

13 And this doesn't matter that this is a public document  
14 in a newspaper. That's not the point. The point is, what was  
15 the defendant focused on? What was motivating him? Things  
16 relating to the IJO and Hezbollah's war against the United  
17 States.

18 Hezbollah was very focused on retaliating after the  
19 death of Mughnayyah. You've heard testimony about the bombing  
20 that happened in Bulgaria, the bombing of the busload of  
21 Israeli tourists. The defendant knew about that.

22 Here is another piece of the internet evidence. He  
23 watched the YouTube video about Hezbollah being suspected in  
24 that bombing and he confirmed to the FBI that not only did he  
25 know that the IJO carried this out, he believed that his

J5FAAKOU1

Closing Statement - Bove

1 handler, his supervisor was someone who helped oversee the  
2 planning of that attack. That's how connected the defendant  
3 was at the highest levels of the IJO and he understood fully  
4 what the IJO was doing. This wasn't just about taking some  
5 pictures and downloading some things from Google Earth. This  
6 was about trying to kill people.

7 Here is some more evidence relating to the fact that  
8 the defendant was well aware and very much invested in  
9 Hezbollah and the IJO's mission of targeting the United States.  
10 More internet activity all from the unallocated clusters on the  
11 laptop, all things that he tried to delete, videos "Like  
12 American Soldier Shot in Helmet", "Iran Versus America",  
13 "Iranian Gunboats Harassed U.S. Navy". These are the kinds of  
14 things the defendant watched at home in the privacy of his  
15 apartment where he thought nobody was looking at him after  
16 spending a long day on the streets undercover as an IJO  
17 operative.

18 This is some more of the propaganda. Again, to  
19 continue to give you a sense of what drove the defendant, what  
20 his intentions were, his motivations. Soldiers covered in  
21 blood. And this statement, He who doesn't pull his weapon has  
22 no loyalty. The call for death has come aloud. That's the  
23 martyrdom concept. That's what the defendant was here  
24 committed to.

25 Here is another except from a video and again the text

J5FAAKOU1

Closing Statement - Bove

1 that speaks directly to what the defendant was doing here, what  
2 motivated him. And harm us with all your might and bring even  
3 more. We remain patient. On the route of jihad we are  
4 resolute.

5 In this concept of a patient jihad it's important for  
6 a sleeper cell operative. Like Ms. Houle told you at the  
7 beginning of this trial, the defendant was here playing the  
8 lawn game. He was doing things to help advance IJO's tact  
9 planning even if he hadn't been asked to directly carry out and  
10 attack. And those things that the defendant was doing, the  
11 surveillance, collecting information, identifying weapons  
12 suppliers, those are the services and support that he provided  
13 to Hezbollah that make him guilty.

14 So, with that background let's talk a little bit  
15 little about the way the Hezbollah groomed the defendant for  
16 this jihad, the way they trained him. As I said, this started  
17 in 2000 with that boot camp, the defendant's first military  
18 training, 45 days in the Bekaa Valley, something he described  
19 to the FBI. And then this document on the top left of the  
20 screen is another link that the defendant looked at. This is  
21 something you saw from the testimony of Ms. Shields yesterday  
22 where he is reading about and reminiscing about where his  
23 training started. The Bekaa Valley is Hezbollah's logistics  
24 area.

25 That same year Israel withdraws from Lebanon as I said

J5FAAKOU1

Closing Statement - Bove

1 and this is an excerpt from the testimony of Dr. Levitt about  
2 that. And so suddenly the defendant had been even as a  
3 teenager preparing to fight an armed conflict on behalf of the  
4 terrorist organization. And now some of this conflict  
5 dissipates a bit. And this is the point which the defendant  
6 and his family shift focus towards coming to the United States  
7 towards targeting the United States. That starts with these  
8 false visa applications that you saw during the testimony of  
9 Mr. Hansen and that are also in the summary chart that  
10 Ms. Shields testified about yesterday.

11 So, how does this start? Mohammad Kourani, the  
12 defendant's father, shown here on the right side of screen  
13 submits this application on April 30, 2001 -- that's the red  
14 box -- purporting to have married Wanda Reyes. Now, a couple  
15 things about this. This is one of those times that a picture  
16 explains everything. The marriage fraud is demonstrated right  
17 on the screen there. That is not a natural pose. That is  
18 someone that the defendant's father paid to set up this  
19 marriage so that he could submit his visa application.

20 MR. SCHACHT: Objection.

21 THE COURT: Overruled. It's argumentative. It's  
22 comments on what is already in evidence.

23 You may continue.

24 MR. BOVE: Thank you, judge.

25 Now, I want to be clear. Let's folk on the date of

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Closing Statement - Bove

1 this application because this testimony came at the end of a  
2 long day last Thursday and it might have been missed. This  
3 application was submitted on the last day, the last possible  
4 day that somebody could get a visa who had entered the United  
5 States illegally. Mr. Hansen explained that as of May 1, 2001  
6 you couldn't apply for a visa if you entered without getting  
7 here illegally. So, that's how calculated this was. They  
8 figured this out. Hezbollah sent the defendant's father here  
9 and to apply for this thing at the last moment possible.

10           Here is the confirmation that the defendant did, in  
11 fact, enter illegally. At this time it was OK to just admit  
12 that this EWI entry on the screen that's highlighted, "entry  
13 without inspection", it was still legal to just admit to the  
14 United States. I got here illegally. I now have this  
15 marriage. Now I'm applying for a visa. That couldn't have  
16 happened if the defendant's father had waited two or three days  
17 to submit this application. This was a calculated effort from  
18 the beginning to get the defendant into the country.

19           Here's the defendant's application submitted a few  
20 months after that, December 31, 2001. His name is down in the  
21 bottom of the screen in the red box and you can see that it's  
22 claiming that Wanda Kourani, Wanda Reyes, is his stepmother.

23           What happens next? The defendant wasn't in the United  
24 States yet. His father had come here illegally but the  
25 defendant was waiting in Lebanon to see if they could really

J5FAAKOU1

Closing Statement - Bove

1 pull this off. And as the paperwork got processed and beat the  
2 deadline, it was materializing. The plan was coming to  
3 fruition. And so the defendant gets a visa and he travels from  
4 Lebanon to Cyprus to file this document, application for an  
5 immigrant visa, where he says to the United States, Wanda Reyes  
6 is my stepmother and I would like to go to the United States to  
7 live with here. And there's a question on this document that's  
8 one of the first lies that the defendant himself told in  
9 connection with these visa applications. He is asked if he is  
10 a member or representative of a terrorist organization  
11 currently designated by the United States.

12 Having attended a 45-day Hezbollah boot camp before  
13 submitting this application, the answer to this question, the  
14 truthful answer is emphatically "yes". But he lied and he was  
15 able to get a visa based on that lie. Here it is. Issued you  
16 see on the top left. July 30, 2003, the defendant gets a visa  
17 to come here to the United States, one of the first steps in  
18 establishing his cover identity because now it looks like he is  
19 here lawfully.

20 The Permanent Resident card is what's referred to as a  
21 Green Card. So now he has that document. It's an  
22 identification document that in 2003 is an important part of  
23 his cover, and it helps him enroll at CUNY to start on this  
24 biomedical engineering degree course work.

25 Ladies and gentlemen, the defendant's not a biomedical

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Closing Statement - Bove

1 engineer. He never did anything biomedical engineering. I'm  
2 not here to mock anybody's grades but he wasn't a serious  
3 student. This was all a cover. He was setting himself up so  
4 he could do things like go to China and say he was there to  
5 look for medical devices.

6 The top of the screen is an excerpt from the testimony  
7 of Gary Baptista from the FBI, explaining that when the  
8 defendant had described his family as the Bin Ladens of  
9 Lebanon. And at bottom of the screen you can see one of the  
10 first cracks in the plan of Hezbollah to get the defendant's  
11 family into this country.

12 The United States figured out the first part of the  
13 visa fraud. They denied the application of the defendant's  
14 father for that immigrant visa. So, that is on the left side  
15 of the screen, the denial on the red box. Then on the right  
16 side of the screen is the order of the immigration judge  
17 telling the defendant's father that he needs to leave. He  
18 needs to go back to Lebanon.

19 So, he did. But there's a really telling feature of  
20 this document in the level of tradecraft that is going on here  
21 that shows you how intentional this was to set the defendant up  
22 in this sleeper cell. You see the red box where it says  
23 "passport Belgium"? Where on earth did the defendant's father  
24 get a Belgian passport? I'll tell you where. It's a fake  
25 document from Hezbollah. And you heard that the defendant

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Closing Statement - Bove

1 described this to the FBI, how the IJO and Hezbollah were  
2 interested in obtaining false identification documents so that  
3 their operatives could travel. The defendant's father has no  
4 connection to Belgium and here he is traveling on a document  
5 like that. Just more proof of the level of tradecraft that's  
6 going on. And a little bit of cracks along the way where you  
7 can see the trail of what really happened here.

8 THE COURT: One minute please.

9 (Pause)

10 THE COURT: Can I see counsel, please.

11 (Continued on next page)

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## Closing Statement - Bove

1 (side bar)

2 THE COURT: Mr. Bove, you were arguing that the  
3 father's application relating to citizenship in Belgium was  
4 fraudulent?

5 MR. BOVE: That it was false, yes.

6 THE COURT: What's the proof of that?

7 MR. BOVE: The defendant admitted that to the FBI in  
8 the interviews at Seton Hall.

9 THE COURT: Was that an admission.

10 MR. BOVE: Yes.

11 THE COURT: OK.

12 (Continued on next page)

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J5FAAKOU1

Closing Statement - Bove

1 (In Open Court)

2 THE COURT: You may continue, Mr. Bove.

3 MR. BOVE: Thank you, your Honor.

4 This is copy of the defendant's Lebanese passport and  
5 we are going to come back to this but I want you to remember  
6 that after the defendant joined the IJO, he stopped bringing  
7 this document into the country because he was trying to hide  
8 and he didn't want to be asked at airports about the travel to  
9 Lebanon reflected in this document.

10 But there was one error in this and it is that when he  
11 had to submit his application for naturalization he submitted  
12 photocopies of the passport and that's what these are. So, you  
13 can see that during the time that the defendant's father  
14 traveled back to Lebanon on that Belgian passport, the fake  
15 document, he continued to go back, continued to meet with -- go  
16 back to Lebanon and meet with people who were Hezbollah  
17 operatives.

18 There's another relative that was also sent to the  
19 United States and then forced back to the Lebanon.

20 THE COURT: What you showed is a Lebanese passport?

21 MR. BOVE: Yes, your Honor.

22 The defendant's brother, Kassem Kourani, was here in  
23 the United States issued an employment authorization, a card by  
24 2005. And remember the document that Mr. Hansen explained to  
25 you where he was seeking a parole? He wanted to go back to

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Closing Statement - Bove

Lebanon and then have permission to re-enter? That application was denied and he goes back in 2009 to live in Lebanon. Who was Kassem Kourani? The defendant explained that. Kassem kourani is the face of Hezbollah in Yater, the defendant's hometown. And so now the defendant has two strong direct immediate connections to Hezbollah living back home.

So, now we're up to the story until about 2008 or 2009 and so like I said, the defendant's father and his brother, two of his most immediate connections to Hezbollah are back in Lebanon. Let's take a couple steps back now to talk about when the defendant was actually recruited and promoted to the IJO, the terrorist unit of Hezbollah.

This is the trip. This is when it happened. He goes to Lebanon in late 2007 and he comes back to the United States in January 2008. The defendant said to the FBI at Seton Hall, I was recruited in about 2000. He eventually admitted that, and these are the entries in the passport reflecting the trip. What happened during this recruitment? There were a few steps. First, there was a cleric sheik, Hussein Kourani, who approached the defendant about the IJO in Lebanon and he introduced him to this man that the defendant only said was named "Abdullah" and they had the first meeting to discuss the IJO.

But it takes a lot more than that to get into this elite terrorist organization. So, there's a second meeting

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Closing Statement - Bove

1 with the members of the Hezbollah security Unit to vet him and  
2 make sure he is prepared to do the work that is required to be  
3 a member of the IJO.

4 And then the training starts. The defendant described  
5 this at Seton Hall. There's a third meeting in Lebanon with  
6 somebody from the Hezbollah Intelligence Unit where he is  
7 taught from the earliest stages how to resist interrogations.

8 Next step, all in the same trip is his introduction to  
9 his handler Majed Abdullah, who the defendant referred to at  
10 Seton Hall as "Fadi".

11 MR. SCHACHT: Objection.

12 THE COURT: Comments on the evidence. This was in the  
13 evidence. It's fair comment. You can comment the other way.  
14 The jury will make up its own mind.

15 MR. BOVE: How do you know that Fadi is Majed  
16 Abdullah? Remember the first meeting at Seton Hall. The FBI  
17 very much wanted to know who the man was that was supervising  
18 the defendant because that man was responsible for other acts  
19 of terrorism. There was blood on Fadi's hands and they wanted  
20 to figure out who that was. And so they showed the defendant  
21 some pictures. The defendant had seen this picture already  
22 when he met with Gary Baptista in 200 and he said, don't  
23 recognize him.

24 In 2017 the FBI puts this picture on the table and he  
25 says, I'm not sure if that's my handler. And then Special

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Closing Statement - Bove

1 Agent Shannon explained what happened. They left the photo  
2 there for the rest of the meeting and the defendant maybe  
3 instinctively, maybe intentionally, unclear, he pointed to this  
4 photo for the rest of the meeting when he was talking about his  
5 handler, Fadi.

6 (Continued on next page)

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J5FKKOU2

Summation - Mr. Bove

1                   MR. BOVE: (Continuing) He just didn't want to give  
2 up the name, ladies and gentlemen, but this is the defendant's  
3 handler in Lebanon.

4                   So what happens at the defendant's first meeting with  
5 this handler, his terrorist mentor, his supervisor? The  
6 defendant gets taught the golden rule of unit 910. That's the  
7 unit number for the Islamic Jihad Organization. The less you  
8 know about the unit, the better. The defendant was also told  
9 that what he would do for the IJO was going to be kept a  
10 secret, a secret even from other members of Hezbollah who were  
11 not in the unit. That's important when you think about his  
12 interactions with other people in the case, like the relatives  
13 of his wife, who were members of Hezbollah, they didn't know  
14 what he was doing either. That's how secret this was.

15                  After the defendant meets with Fadi, he is taken on  
16 this tour of South Lebanon. This is another place where the  
17 evidence intersects with that war in 2006 between Israel and  
18 Lebanon. Following that tour, they walk him through the  
19 military tactics that IJO thought was successful. He's  
20 formally brought into the organization, he's formally a member  
21 of the IJO. He had joined Hezbollah in 2000, at that 45-day  
22 boot camp, but now he's promoted to a spy for this terrorist  
23 unit of Hezbollah.

24                  How do you know that this was the trip where it  
25 happened? This is the place where the defendant's Internet

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Summation - Mr. Bove

1 history tells the story. He gets back, he departs Lebanon on  
2 January 26, 2008. Three days later, January 29, 2008, he's  
3 reading about the 2006 War. This is that search at the top  
4 that we've already talked about, the fin grad report. The name  
5 is actually Winograd. He's reading about the 2006 War because  
6 he had just been taken on that tour, and he comes back, and  
7 he's fascinated by it, he's got this new assignment, new set of  
8 objectives that are motivating him, and he's on the Internet  
9 reading about what's going on. So that's how you know that  
10 that was the trip, that by January 2008, the defendant was a  
11 member of the Islamic Jihad Organization, promoted within  
12 Hezbollah.

13 This is another example of the research that the  
14 defendant was doing, the background reading that he was doing,  
15 as soon as he got home. He couldn't wait to get involved and  
16 to further these objectives.

17 Let's pause for a moment. I've said some things about  
18 this laptop that's the defendant's, and I've said some things  
19 about the defendant's email accounts. How do you know that  
20 these are his laptop and his email? The laptop tells the  
21 story. These are all documents retrieved from the laptop - his  
22 resume with the cover identities, with the email accounts  
23 listed on the resume, there's a driver's license issued in his  
24 name, there's a photograph of the defendant. At the bottom of  
25 the screen, you can see a reference to his -- there are two

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Summation - Mr. Bove

1 email accounts, ali.m.kourani@gmail.com, and at the bottom of  
2 the screen is a reference to the alikuku account that you heard  
3 some testimony about. There is no serious question that this  
4 was the defendant's laptop, that this is the defendant's  
5 Internet history, and this is what he was doing immediately  
6 after he joined the IJO and came back to the United States.

7 The next thing that happens in the story is that the  
8 defendant is back here, and you just saw those searches, and he  
9 comes back in late January 2008, and then the leader of the IJO  
10 is murdered, Imad Mughnayeh. Dr. Levitt, I think in a very  
11 succinct way, made clear Hezbollah's reaction to the death of  
12 Mughnayeh. This is a quote from Nasrallah: Let there be open  
13 war. And the defendant was a part of that. He was here  
14 secretly, no question about that, but he was here to help  
15 Hezbollah and the IJO position itself to retaliate for the  
16 murder of Mughnayeh.

17 The defendant admitted as much to the FBI at Seton  
18 Hall. This is testimony from Special Agent Shannon about the  
19 way the defendant described the death of Mughnayeh. He says  
20 they were desperate because they were looking to exact revenge  
21 for the death. This is what the defendant was a part of. As  
22 soon as he was sent back to the United States as an operational  
23 terrorist for the IJO, this happens, and that drove him and  
24 everything that happened after it.

25 Here's some more research for Al-Manar. Again,

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Summation - Mr. Bove

1 terrorist propaganda for Hezbollah, not politics, not  
2 humanitarian aid, terrorism. This is May 2008. The defendant  
3 is a full-pledged member of the IJO, he's out in the community,  
4 living under this cover, but in his apartment, this is what  
5 he's doing, thinking about the death of Mugniyah and how they  
6 are going to position themselves to retaliate.

7 Now we're going to talk a little bit about how the IJO  
8 trained the defendant and his spy techniques, his tradecraft,  
9 things that the defendant did that help you to understand that  
10 he is guilty, things that normal people don't do in their  
11 everyday lives.

12 THE COURT: Mr. Bove's been talking about an hour now.  
13 Does the jury need a break?

14 Keep going.

15 JUROR: Keep going.

16 MR. BOVE: So the first part of the defendant's  
17 training, as I've said, was to resist interrogation. There's a  
18 note entry here at the bottom of the screen. The defendant  
19 wrote this down, this is from the document that was seized from  
20 his apartment, confirmation that this actually happened. So  
21 you have Special Agent Shannon's testimony about what the  
22 defendant said at Seton Hall, and then you have, in the  
23 defendant's words, one-on-one training, ask questions, evaluate  
24 your interrogator.

25 The defendant also was trained to use weapons by Fadi,

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Summation - Mr. Bove

1 his handler. This training is separate from what happened in  
2 2000. Trained to do things like shoot a Glock, an MP5, and an  
3 AK-47, refreshing his knowledge of those weapons, preparing him  
4 to use them if the time came in a terrorist attack.

5 The defendant said to Special Agents Shannon and  
6 Costello at Seton Hall that Fadi used a particular email  
7 account, and he described how that was set up. Fadi asked for  
8 the name of one of the defendant's childhood friends, somebody  
9 who wasn't connected to Hezbollah, so that Fadi could set up an  
10 email account using that person's name that would be less  
11 suspicious and communicate with the defendant while he was in  
12 the United States. The name that the defendant gave Fadi was  
13 Helal Kedal, and here you can see that shortly after the  
14 defendant got back from being recruited to join the IJO,  
15 there's a contact entry that is added to his email  
16 alikuku@hotmail.com, and it's an email account in the name that  
17 he provided to Fadi, a contact that was saved in March 2008,  
18 just after the defendant came back.

19 This shows you -- this is one of the pieces that shows  
20 you that everything that the defendant said and admitted to at  
21 Seton Hall is true. He didn't know that the FBI was going to  
22 go get his email contacts and find this there. He didn't know  
23 the other pieces of the evidence that corroborate what he was  
24 telling them.

25 The next step in the defendant's IJO training is the

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Summation - Mr. Bove

1 formal military training. He described this during several  
2 meetings at Seton Hall. In July 2011, he went back to Lebanon,  
3 he went to a place called Birkat Jabbour, a military training  
4 facility for Hezbollah and the IJO. You can see his travel  
5 records here on the screen. He says to the FBI that this  
6 training happened in July 2011. He went back to Lebanon in  
7 June 2011, and he returned from the United States in August,  
8 and then there is an entry from his notes, reconfirmed in  
9 writing, outside the meetings from the FBI on his own where he  
10 was taking stock of what he had done, and this entry refers to  
11 training. It did involve a handgun. MPs, referring to the MP5  
12 and the Glock, and then at the end: It was five days. So this  
13 is independent evidence corroborating the defendant's  
14 confession about this training.

15 One important feature of this training that the  
16 defendant described at Seton Hall is that there were at least  
17 two high-level IJO operatives there, Fadi Kassab and Mohammad  
18 Schawraba. And Schawraba's name is going to come up in a  
19 little bit, but this gives you a sense of what was going on in  
20 this camp. The defendant said there were about 25 operatives  
21 there. He said some of them had American accents, so they were  
22 part of the same sleeper cell as the defendant. And this is  
23 not the rank and file IJO; this is the highest level of the  
24 organization gathering to learn terrorist techniques.

25 These are the weapons that the defendant described

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Summation - Mr. Bove

1 operating at this training. You saw them in this courtroom.  
2 And we brought those weapons here to help you get a sense that  
3 these aren't just pictures, ladies and gentlemen. And when the  
4 defendant was at an IJO training camp, learning to operate a  
5 thing like a PKM, a belt-fed machine gun, a rocket-propelled  
6 grenade launcher, let's think for a minute about what's really  
7 going on there. This was not training for the Lebanese Army.  
8 This was the training of a terrorist organization. The people  
9 at that camp, including the defendant, were training to turn  
10 those weapons on civilians. That is what terrorism is, and  
11 that's what was going on at this camp. This isn't Hezbollah  
12 boot camp, it's not the Lebanese military. This is preparing  
13 to use weapons for acts of terrorism.

14 Now, I mentioned in the beginning that the defendant  
15 has deleted some of his Facebook messages. This is really the  
16 first time in the evidence that that comes up. So you see on  
17 the bottom of the screen, there are deleted messages with  
18 Mohammad Sadek. These are out of the defendant's Facebook  
19 account. June 16, 2011, so a little bit before he comes to the  
20 training. And then on the top, there are deleted messages from  
21 August 15, 2011, so right after he gets back.

22 So as the defendant is preparing to go to the training  
23 and after he gets back, he's communicating with this guy,  
24 Mohammad Sadek. Who is Sadek? Sadek is a close associate of  
25 Hassan Nasrallah on his Facebook page, sitting on a couch, next

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Summation - Mr. Bove

1 to him. That is the level of contact within Hezbollah and the  
2 IJO that the defendant had. He was not a foot soldier. This  
3 was a high-ranking spy here in the city.

4 On the bottom of the screen, you can see that he  
5 also -- the defendant also had in his phone a contacts entry  
6 saved for Sadek with his cell phone, and you can see that he  
7 also deleted that as well.

8 It's not four messages that the defendant deleted,  
9 ladies and gentlemen. He deleted 98 messages out of his  
10 Facebook account with Sadek, the man on the couch next to the  
11 Secretary General of Hezbollah, both before and after his  
12 training.

13 It's also important to note that he didn't delete all  
14 his messages. You can see on the right side of the screen that  
15 he had one in 2015 that he didn't get rid of. He got rid of  
16 the ones that were incriminating because he did not want you to  
17 see them at this trial, and now you can understand why -  
18 because he was talking to a high-ranking member of Hezbollah  
19 about coming there for this training.

20 Now let's get back to the Helal Kedal email account,  
21 the cover email account used by Fadi. Around the time of that  
22 training, a little bit after, October 2011, he sets up -- Fadi  
23 sets up a new email account with a variant on this Helal Kedal  
24 name. This one is a Hotmail account, and you can see that it's  
25 created. On the top is the subscriber information with a

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Summation - Mr. Bove

1 second email account used by Fadi. You can see it's set up in  
2 Lebanon, it was set up on October 15, 2011. And then on the  
3 bottom of the screen are the safe contacts from the defendant's  
4 email, alikuku@hotmail.com.

5 Four days after that account was created, it's saved  
6 in the account of the defendant. That is because this was set  
7 up, so that the defendant could have contact and receive  
8 communications from the IJO while the defendant was in the U.S.  
9 and his handler was in Lebanon.

10 More deleted chats, with a different person, Bilal  
11 Kourani. So right around the time that Fadi sets up a new  
12 email account to covertly use to communicate with the  
13 defendant, the defendant has a bunch of chat communications  
14 with this guy, Bilal Kourani, all deleted.

15 Who's Bilal Kourani? This is from his Facebook  
16 account. Bilal Kourani is a member of Hezbollah and a  
17 Hezbollah soldier, someone who you can see from the photo on  
18 the right side of the screen is committed to the idea of  
19 martyrdom, as the defendant was. The translation of that  
20 picture, "I might come back or I might not, so forgive me," the  
21 defendant is in the United States talking to someone who's  
22 openly committed to Hezbollah and ready to die for that cause,  
23 just like the defendant was. And that is why the defendant  
24 deleted those chats.

25 And just like with Sadek, he didn't delete everything.

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Summation - Mr. Bove

1 The ones that were not incriminating -- here's one -- it's  
2 still in the account. He got rid of the ones that he didn't  
3 want you to see because they were cracks in his cover, because  
4 biomedical engineers don't communicate with Hezbollah members.

5 The defendant admitted at Seton Hall what happened  
6 with the email accounts that Fadi used. These two Helal Kedal  
7 accounts. He said he was instructed to get rid of them, to  
8 stop using them, because the IJO was concerned that that  
9 communications method had been compromised. The defendant  
10 wrote that down at the top of the screen. This is from his  
11 notes document, Government Exhibit 222, emails deleted. So  
12 when Mr. Schacht is arguing to you and suggesting that there  
13 should be emails someplace, that they're not in evidence, this  
14 is the answer - the defendant deleted his emails with Fadi, so  
15 that you could not see them. And he admitted that at Seton  
16 Hall. He said he deleted them as soon as he got them.

17 Here's the evidence that shows you you know what  
18 happened. Let's start at the top. This is from the safe  
19 contact entry from the defendant's email account. So the email  
20 address that Fadi was using was Helal, H-e-l-a-l. This is an  
21 entry from the forensic analysis of the defendant's laptop. He  
22 did a search for the word Helal, H-e-l-a-l, and you can see  
23 that he's searching his Gmail account, ali.m.kourani. Why? To  
24 purge the emails. To make sure that he got rid of all of them.  
25 I've shown you two of Helal Kedal emails, and it's the same

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Summation - Mr. Bove

1 story with the second. It's this other contact was spelled  
2 Hilal, H-i-l-a-l, and what happened with that? The defendant  
3 did a search for that exact term H-i-l-a-l, so that he could  
4 purge, even from his spam, the messages that he had had with  
5 Fadi, so that you couldn't see them and wouldn't have evidence  
6 of what he was doing. But he slipped up, because this forensic  
7 evidence is here, and now you can see what he was doing, and  
8 you know why he deleted those messages, because they were with  
9 his terrorist handler.

10 Another thing about the deleting of these messages:  
11 The defendant said at Seton Hall that this happened in 2012.  
12 When were these contacts last touched, last changed in the  
13 defendant's email account, which you can see on the left,  
14 alikuku? The same day, the same time, in 2012. This was a  
15 concerted effort to stop using the accounts at this point.

16 The defendant also talked at Seton Hall about using  
17 draft email messages to communicate, and, of course, he got rid  
18 of them, just like he did the Fadi emails, with one exception.  
19 And so how does this work? Email accounts were set up, drafts  
20 were saved, so that they could be read in other places. So on  
21 the defendant's phone, there are these examples of draft  
22 emails -- one, two, three -- that weren't fully deleted from  
23 his phone, so you can see that he was using this technique to  
24 communicate. And then the one draft email that the defendant  
25 forgot to delete is the one that relates to China, his trip to

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Summation - Mr. Bove

1 China.

2 Now, this draft was last saved in 2010. That's after  
3 he went to China, and we're going to talk about that trip in a  
4 minute. But these are all draft emails that corroborate what  
5 the defendant was saying about using that method to  
6 communicate.

7 The next thing that the defendant did to communicate  
8 without people picking up on it or generating evidence of it  
9 was to use cutouts, intermediaries. So when he got to Lebanon,  
10 his handler didn't call him, they called his father or his  
11 brother, and so this is the testimony from Special Agent  
12 Shannon where she described that. This is a set of exhibits,  
13 emails from the defendant's account, that give you a sense of  
14 how the defendant and his father, his two most immediate  
15 connections to Hezbollah, were living in Lebanon. The  
16 attachments to these emails show the data on the top left and  
17 Hassan Kourani on the bottom left, living in a big house with a  
18 BMW out front and a motorcycle, and the defendant said to the  
19 FBI, I never got paid to do this, I was just doing it because I  
20 wanted to. Hezbollah was paying and setting up the defendant's  
21 family in Lebanon as he provided this assistance in the United  
22 States.

23 This is what's in the living room. So this photo is  
24 on the bottom right of the screen. The family house in Yater  
25 has a picture of Nasrallah sitting in the living room as the

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1 centerpiece in that room.

2                   Alikourani1985@hotmail.com, this is another person  
3 that the defendant was communicating with who is a member of  
4 Hezbollah, and to try and maintain this carve-out, so that he  
5 wasn't communicating directly with his father, this person,  
6 alikourani1985 was sending the defendant email messages on  
7 behalf of his dad. So his dad applied for a new visa in 2013,  
8 and that didn't work out, it was denied. Did his father reach  
9 out directly to the defendant to tell him that? No, it was too  
10 sensitive. He didn't want to be seen communicating directly  
11 with him, so alikourani1985@hotmail.com sent him this message.  
12 1985 is a reference to the open letter of Hezbollah when the  
13 organization first announced itself, and you've seen the  
14 evidence from this alikourani1985 email account. It's a  
15 different person, it's not the defendant, but this is someone  
16 else who's lauding Hassan Nasrallah, and then you can see at  
17 the bottom right of the screen, posts this news article about a  
18 relative who's captured on the battlefield in Syria, a  
19 Hezbollah fighter, Mousa Kourani, captured in that conflict.

20                  Ali Srour is another example of a person that  
21 Hezbollah and the IJO used to communicate with the defendant  
22 while avoiding direct contact with Fadi. The defendant told  
23 the FBI who Ali Srour was, a member of Hezbollah who works on  
24 missiles. So here's an example, ladies and gentlemen. Ali  
25 Srour sends the defendant copies of his Lebanese passport, and

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1 as I've already said, there was a concerted effort not to bring  
2 that passport back into the United States. So here you have  
3 Srour, a member of Hezbollah assigned to missiles, sending that  
4 copy to the defendant so that he can use it.

5 Lastly, on the tradecraft, the smuggled SIM card, the  
6 SIM card that the defendant taped onto the back of his passport  
7 underneath this sticker. And Mr. Schacht cross-examined  
8 witnesses about whether or not this was normal and how people  
9 normally travel. The reason you know that this was tradecraft,  
10 that this was not just a normal traveler, first just look at  
11 it. Who does this? But the second point is that the defendant  
12 had taken the SIM card out of his phone, so the data that was  
13 on that SIM card, he didn't want the U.S. Government to see as  
14 he crossed the border, and so he took it out of his phone. The  
15 phone was missing the SIM card, and he slipped it under his  
16 passport to hide it.

17 Now, look, they didn't take the data from that SIM  
18 card, that's conceded -- there was an error in that way -- but  
19 you still have this example, one of the cracks in the  
20 foundation of the defendant's cover identity.

21 Now let's talk about the defendant's missions, the  
22 things that he did here for the IJO.

23 There were six. The one, deepen his cover identity  
24 that I mentioned, the citizenship and the passport, and he  
25 surveilled U.S. military and intelligence locations, he looked

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Summation - Mr. Bove

1 at airport procedures in Toronto and at JFK, he was assigned,  
2 and he did target and identify Israelis, he also located  
3 weapons suppliers and established weapons storage. So let's go  
4 through these.

5 This is the defendant's naturalization application,  
6 submitted at the direction of the Islamic Jihad Organization,  
7 on August 15, 2008. So, remember, he joins in January 2008,  
8 and then he applies for naturalization in August.

9 These are the false statements in that application:  
10 He denies being a member or even associated with a terrorist  
11 organization. He denies having committed any crimes for which  
12 he was never arrested, and then he also denies having provided  
13 any false or misleading information to U.S. authorities in  
14 connection with his travel. Four separate lies in this  
15 document to obtain citizenship.

16 This is the end result of that, ladies and gentlemen,  
17 the naturalization certificate, that he obtained on April 15th,  
18 2009.

19 What happened on the same day? The defendant comes  
20 right into Manhattan and applies for his U.S. passport,  
21 immediately using the naturalization certificate as the  
22 document that was proof of his identity. This was all part of  
23 a concerted operation.

24 He was Kassem Kourani, the face of Hezbollah in Yater  
25 as his contact, and he says he has no travel plans at that

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Summation - Mr. Bove

1 point. This is April 15, 2009. You can see in the bottom  
2 left, he gets the passport on April 22nd. April 30th, 2009, he  
3 gets a visa to enter China, despite having said he has no  
4 travel plans. And then on May 3rd, 2009, the defendant goes to  
5 China.

6 Now, look, you heard from Dr. Levitt about what the  
7 IJO was doing in China in this time period. They were looking  
8 for suppliers of ammonium nitrate to make explosives. The  
9 defendant's travel to China, it's not random, and everything  
10 was set up so he could do this immediately to help in this  
11 mission, but say, no, I was not looking for ice packs with  
12 ammonium nitrate. I'm a biomedical engineer, I was going to  
13 look for medical devices. This is an example of the defendant  
14 using his cover to carry out IJO operations.

15 One of the next things that happens in the story  
16 keeping the defendant's cover identity is that he marries Leila  
17 Abadi. I'm not suggesting to you whether or not this was a  
18 loving marriage, but what I am saying is that the defendant  
19 married a Canadian citizen with ties to Hezbollah. He  
20 described the place where she lived in Lebanon as a compound  
21 like Tora Bora, another bin Laden reference, and he talked  
22 about conversations with his handler where they talked about  
23 the utility of having connections to Canada, so he could travel  
24 back and forth to Canada to conduct operations.

25 The next step in deepening the cover identity. The

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1 biomedical engineering degree wasn't enough, so then the  
2 defendant starts to pursue an M.B.A. in the summer of 2012,  
3 right after the marriage.

4 And let's be clear: This was all a cover. This is a  
5 text message from the defendant's phone where he's talking to  
6 his wife. He says: "When we first got married, I was doing  
7 the fake shit with school." He's talking about the M.B.A. It  
8 was done exclusively to enhance his cover, to try and make it  
9 easier for the defendant to operate in the United States  
10 without drawing suspicion.

11 Another thing that the defendant did a little bit  
12 later, in 2013, was apply for a passport card. He admitted at  
13 Seton Hall why he did that. His handler said: Look, it's  
14 possible you can be traveling, and the U.S. Government could  
15 seize your passport, but if you can make it to Mexico or make  
16 it to Canada, then you will be able to get back into the United  
17 States using this card. So you can see that he got that advice  
18 during a trip to Lebanon in early 2013 -- that's the left side  
19 of the screen -- and he submits the application in  
20 April 2013 -- that's the middle document -- and then he gets  
21 this passport card. Ladies and gentlemen, he never used this  
22 document. It was just there for emergency purposes.

23 The next thing that the defendant did was collect  
24 information and conduct surveillance of U.S. Government  
25 facilities. And these are the examples -- and, remember, you

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know this not just because the defendant described it, but at the meetings, he actually had his lawyer initial the places that he surveilled. So let's talk about them.

The first two, 26 Federal Plaza and 335 Adams Street, the Secret Service offices. And you can see in the top of the screen, that the defendant actually conducted a Google search in March 2013 for 26 Federal Plaza. This is where the Internet evidence corroborates the evidence of what the defendant was doing here, it corroborates his admissions.

Now, the defendant said at Seton Hall what he did for these two buildings, ultimately, was to download some images from Google Earth and bring them back to Fadi, so they could use them in an attack plan. That's confirmed by the notes entry, which says: Everything else of Google Earth, online research was true. The defendant told the truth about what he did to help the IJO target these two facilities.

Keep in mind what was going on at these two places. 335 Adams Street, Secret Service offices, classified information handling and a joint operations center, the type of place where leaders, and law enforcement, and the military get together in a case of an emergency. On the right side of the screen is 26 Federal Plaza. Those are some of the features of that building that I've already touched on. Thirty federal agencies, more classified information, another operations center, and a daycare center. These are the places the

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Summation - Mr. Bove

1 defendant targeted for the IJO.

2           The other two places are armory facilities, places  
3 operated by the military, the armory in Harlem and an armory on  
4 Lexington Avenue. And you can see on the bottom of the screen,  
5 that this is another place where the defendant slipped up.  
6 There's a crack in his cover. He did a Google search in  
7 March 2014 for this location. This is also another place where  
8 the notes document shows you that the defendant actually did  
9 these things. Here is an entry that says "Outpost on 27th,"  
10 which is near both where the defendant had his front with the  
11 counterfeit clothing and also where the armory was, and then on  
12 the second line, there's the reference to "Lex," Lexington  
13 Avenue, the location that the defendant surveilled.

14           So what's going on at these two places? Military  
15 units are stationed there. Both have about 700 military  
16 personnel. In Harlem, there is a Children's Zone, a community  
17 center. And then on the Lexington Avenue facility, another  
18 joint operations center. These are the types of places, ladies  
19 and gentlemen, that targeting and attacking would help cripple  
20 the entire city. These aren't just high density populated  
21 areas or places with a lot of military personnel; these are  
22 strategic targets by the defendant and the IJO.

23           And remember what he said about the 69th Regiment  
24 Armory. He didn't just download some Google Earth images  
25 there. He actually took a video of the security outside that

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Summation - Mr. Bove

1 location. He admitted to doing that at Seton Hall, to using  
2 his cover identity, the normal commute that he would take to  
3 his counterfeit clothing store, to be on the streets near there  
4 and to use his cell phone to videotape what was going on  
5 outside that place, so that the IJO could see what the security  
6 was like.

7 This is another piece of the defendant's surveillance  
8 of military and intelligence outposts, and this is one we  
9 haven't looked at yet. These are three photos in evidence from  
10 the defendant's laptop, photos of military personnel on the  
11 street. Look at the focus in those photos, ladies and  
12 gentlemen. Those aren't normal pictures. Those aren't  
13 pictures that a biomedical engineer takes. Those are pictures  
14 that a spy takes. And why? Mr. Psoinos explained why, and  
15 it's on the screen here: Identifying information about the  
16 types of uniforms that people wear, the insignias, helps the  
17 IJO to figure out who key personnel are in the organization,  
18 helps the IJO figure out how military personnel are armed and  
19 how they operate when they're out on the streets. And so these  
20 photos show more evidence of the defendant targeting military  
21 and intelligence outposts here in the United States.

22 Another thing that the defendant admitted to doing was  
23 studying security procedures at airports and, in particular,  
24 JFK and Toronto Pearson. So here is the testimony from Special  
25 Agent Shannon on the top, that he had confessed to having done

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Summation - Mr. Bove

1 that. And it's fairly obvious, I think, why a terrorist  
2 organization would want to know those things, they were  
3 thinking about how to get terrorists, and weapons, and  
4 contraband through airports, from Lebanon into Canada, from  
5 Lebanon into the United States. So what are some of the things  
6 that the defendant looked at? Exit points, security  
7 checkpoints, camera locations, baggage claim procedures, again,  
8 what uniforms were worn, questions asked during screenings.  
9 This is all conduct that the defendant confessed to, and the  
10 defendant took that information, and he brought it back to Fadi  
11 in Lebanon, and that is another part of the support and the  
12 services that the defendant provided as a terrorist to  
13 Hezbollah and the IJO.

14 It's clear that he had enough time in both of these  
15 airports. The travel records and evidence show that he went  
16 through JFK 19 times. He went through Toronto seven. Plenty  
17 of time to do exactly what he confessed to doing - studying  
18 security procedures.

19 The defendant admitted to being tasked by the IJO with  
20 identifying and targeting Israelis and members of the Israeli  
21 Defense Forces, the people who fought against Lebanon in that  
22 2006 War. What the defendant said at Seton Hall was that he  
23 used the LinkedIn website to look up people who listed the  
24 Israeli Defense Forces in their profiles, and he went back to  
25 Lebanon, and he told Fadi, hey, this is how you can do this,

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1 it's fairly straightforward, and this is a way that we can  
2 locate Israelis and members of the IDF. And the defendant's  
3 Internet history shows that he was extremely committed to this  
4 mission and constantly reviewing things about IDF personnel and  
5 harming them.

6 Here are a few examples. This is excerpts from a  
7 document related to Google Earth on the laptop where there are  
8 questions like what IDF airfield is this? And in looking at  
9 towns, the specific locations of towns in Israel. And it's  
10 another example of the defendant using Google Earth to collect  
11 information that would be helpful to support IJO's goals. And  
12 in the context of all of the other evidence, ladies and  
13 gentlemen, this isn't normal, innocent behavior. This is the  
14 defendant acting for the Islamic Jihad Organization.

15 You saw this document yesterday. The defendant took  
16 down off a public website a document with personal identifying  
17 information for over 35,000 members of the Mossad, the Israeli  
18 intelligence agency. Publicly available? Sure. But the  
19 question is for what purpose. And you know why the defendant  
20 took that down. He took it down to bring it to Fadi to say,  
21 hey, look at this, I'm helping, I'm capable, I'm in a position  
22 to assist this organization, and I'm ready to act.

23 Fadi also asked the defendant to identify suppliers of  
24 weapons. As I said in the beginning, people who could help the  
25 IJO get guns to be used in an attack. So here you have some

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1 evidence that the defendant, he did that, he followed that  
2 instruction. He came back, and he looked on eBay to try and  
3 find weapons suppliers online, to try and find people that he  
4 could connect with to get guns.

5 There's also this search, and this is from -- the  
6 bottom document is from his email. So, yes, a separate part of  
7 his Internet history that shows he's looking at this Atlantic  
8 Tactical website, another place to go and get weapons. Now,  
9 look, the defendant said at Seton Hall, I was told to do this,  
10 I found these people, I brought them back to Fadi, and he  
11 wasn't happy, he didn't like the work that I did here, he  
12 wasn't pleased with my performance, because these weapons  
13 suppliers that I found, he didn't think were reliable enough.  
14 That doesn't matter for purposes of this case and your  
15 deliberations a bit. The issue here, the point, is that the  
16 defendant was asked to do these things, he did them. You know  
17 that because he admitted to doing them and because it's backed  
18 up by what is on his computer. And he did everything that he  
19 could to see that through, to put the IJO in a position to  
20 carry out an attack.

21 In addition to finding weapons suppliers, the  
22 defendant was also asked to find places to stockpile guns  
23 because the IJO thought it might need a place to put a lot of  
24 them. And what the defendant said at Seton Hall was, at first,  
25 Fadi asked me to figure out if it was possible to use front

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1 companies to do this. And this is a place, ladies and  
2 gentlemen, where the defendant's cover identity really merges  
3 with his IJO activities here in the United States, because this  
4 is why the defendant had a counterfeiting business.

5 Mr. Schacht has made some arguments to you about, well, being  
6 engaged in this petty illegal conduct is not consistent with  
7 someone who was trying to stay under the radar. In this case,  
8 it was, and it was because he was assigned by the IJO to set up  
9 front companies that would have premises that could be used to  
10 store weapons. So these are all checks seized out of the  
11 defendant's apartment on the day he was arrested, June 1, 2017,  
12 all with different names, all different fronts, and all part of  
13 the defendant's effort to help the IJO find one of these places  
14 where they could store weapons.

15 But remember what else the defendant said at Seton  
16 Hall about this mission: After he did all these things, and he  
17 figured out the process for setting up these companies, it  
18 turned out to be kind of tedious, it was a lot of work. And so  
19 here the defendant made a recommendation, a proposal. He said  
20 to Fadi, look, it would be better if we just get storage  
21 lockers. I can do that anonymously, and it's easy. And he did  
22 do that, at American Self Storage. So you can see on the top  
23 of this screen here are Internet searches related to American  
24 Self Storage. On the bottom is a picture of the American Self  
25 Storage facility that Special Agent Shannon described.

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Summation - Mr. Bove

1           The defendant finds this place, and then he takes out  
2 a storage unit and an alias, the alias here, Jacob Lewis, on  
3 this document dated October 16, 2009. How do we know that this  
4 is the defendant? You have to follow the paper trail a bit.  
5 So in the top left is the document we were just looking at  
6 where the defendant initially rented this storage facility in  
7 2009, a year after he joined the IJO. Think about that timing.  
8 It's not a coincidence. In 2013, he files this  
9 change-of-address form, October 2013, the same alias, Jacob  
10 Lewis, and he lists a phone number. So this is the bottom  
11 left, (646)266-5373. And around the same time, in 2013 -- and  
12 these are all Government Exhibit 501, ladies and gentlemen -- a  
13 separate document gets filed at American Self Storage for one  
14 of the defendant's front companies, New Spot Fashion, but he  
15 made a mistake, he connected the two inadvertently, he listed  
16 the same phone number, and you can see that on the bottom of  
17 the right side of the screen, (646)266-5373. So the name of  
18 the company on this form, like I said, is New Spot Fashion.  
19 And how do you know that that's the defendant's? Because at  
20 the top right, you can see that one of the checks for New Spot  
21 Fashion was seized out of his apartment.

22           So this is the defendant doing for the IJO what he was  
23 asked to do, taking out a storage locker, so their weapons  
24 could be stored there. And keep in mind, the defendant doesn't  
25 have to be the one who puts the weapons in the locker. Once

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1 that locker is available to the IJO, he can give the key to  
2 Fadi, who can give it to someone else who can come in  
3 completely unconnected to the locker and put the weapons there.  
4 And this is part of the way that the IJO worked, part of the  
5 tradecraft. You have this man with a cover identity as a  
6 counterfeiter taking out a storage locker, but taking it out  
7 because he was tasked with doing it as a spy for the Islamic  
8 Jihad Organization.

9 THE COURT: Mr. Bove, it's 20 to 12:00. I'll give you  
10 25, 30 minutes for rebuttal. If you want to use it up now, I'm  
11 just letting you know how much time you have left.

12 MR. BOVE: Judge, I think we had talked about I had  
13 about two hours for this and then a brief rebuttal. So I think  
14 I have about 20 minutes left.

15 THE COURT: All right.

16 MR. BOVE: Thank you.

17 We're going to talk now about the investigation, the  
18 investigation of the defendant. This started in 2013, as  
19 you're going to see, and what happened here is that the FBI and  
20 law enforcement were taking steps to investigate the defendant,  
21 to disrupt what was going on, and, at the same time, things  
22 were happening to the defendant and the IJO that caused his  
23 position in the organization to shift. You're going to hear a  
24 lot about the FBI's investigation today, I think probably more  
25 from Mr. Schacht than me. Let's be clear about one thing: In

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1 the context of a counterterrorism investigation, which is what  
2 this was, the FBI's objective is to protect the public. And  
3 that can be done in a lot of different ways. One way, sure, is  
4 to arrest a terrorist and try him publicly in a courtroom, like  
5 is happening now. But if there is a threat to the safety of  
6 the public, then the first objective is to stop that threat.  
7 And so there can be small victories along the way by  
8 confronting someone like the defendant, making it clear that  
9 the FBI knows what he's up to, so that he will stop what he's  
10 doing, and you will see those incremental successes along the  
11 way as we talk about the investigation.

12         The first thing that happens in this part of the story  
13 is that the defendant gets arrested for his counterfeiting  
14 activity in November 2013. So this is important because it's  
15 the first time he understands he's being investigated, and it's  
16 important for another reason that relates to the Seton Hall  
17 meetings. The defendant gets pulled over in a traffic stop,  
18 and he makes some admissions during that stop, and this is the  
19 first time the defendant learns the important lesson when you  
20 make statements to law enforcement, they can be used against  
21 you. So you know, from these facts, that the defendant was  
22 well aware of that when he went to Seton Hall and attended  
23 those meetings.

24         The next part of the story relates to what happened  
25 with the IJO. Remember Mohammad Shawraba, the man who was at

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1 the defendant's training in July 2011? All of a sudden, in  
2 2014, after the defendant gets arrested, it becomes public that  
3 Shawraba is actually a double agent, had been working for the  
4 Israelis, and now the defendant has a problem because he has  
5 been at this training camp with Shawraba, and he doesn't know  
6 what Shawraba has said to the Israelis about him. So Hezbollah  
7 is concerned about that, and the defendant is concerned about  
8 that.

9                   January 2014, you see the beginning of a pattern. The  
10 defendant has been arrested by the NYPD, and he decides to try  
11 and flip the situation a little bit, and he applies for a job  
12 at the NYPD, just like he told the FBI that he wanted a job  
13 working with them. But he wasn't actually applying to work  
14 there in a legitimate way. He was trying to get a position in  
15 the NYPD to collect intelligence. He wasn't going to tell them  
16 the truth about who he was. And how do you know that? Because  
17 after he submitted the application, there's a series of  
18 searches associated with his email account about how to defeat  
19 a polygraph. That's on the bottom of the screen. And then  
20 right above, he's thinking about how much money he's going to  
21 make while collecting intelligence about the NYPD.

22                   In late 2014, the defendant gets recalled back to  
23 Lebanon because he's been arrested, he's having problems  
24 related to Shawraba, and they want to know what's going on.  
25 And this is where you can tell that the defendant had made some

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1 headway with the NYPD, with his operation targeting the NYPD,  
2 because he admitted at Seton Hall that when he went back, he  
3 said, look, I have this contact now at the NYPD, his name is  
4 Lieutenant York, here's his contact information, and he  
5 provides that to the Islamic Jihad Organization.

6 How incredibly dangerous is that for Lieutenant York?  
7 There's no legitimate purpose that that information was  
8 provided for. It was provided to the IJO by the defendant, so  
9 that he could be targeted. And that's reflective of the  
10 defendant's intent all the way up to late 2014.

11 The defendant's last meeting with the IJO happened in  
12 September 2015. These are the entries from his American  
13 passport, and he goes back, and what he said at Seton Hall was  
14 that he was told he had been terminated from the unit. That  
15 happened because of the Shawraba situation, because the  
16 defendant had these contacts with the NYPD. His cover had  
17 fallen apart, and so by September 2015, the IJO starts to part  
18 ways with the defendant because he can't be effective anymore  
19 as a spy.

20 He doesn't give up on reading about recent  
21 developments, though, because he's still interested in  
22 Hezbollah. And, here, he's tracking what is going on on the  
23 battlefield in Syria, when one of his relatives gets captured  
24 in that fight. So even though the defendant's out of the IJO,  
25 he's still committed to Hezbollah, he's still a member of that

J5FKKOU2

Summation - Mr. Bove

1 foreign terrorist organization. And when you're thinking about  
2 the charges in the case, that's really the question, his  
3 connection to Hezbollah, not just the IJO.

4 In 2016, you heard from Special Agent Battista that  
5 the FBI met with the defendant. They went to him. A few  
6 things happened during these meetings. The defendant said I  
7 have no connections to Hezbollah, but he also displayed  
8 tradecraft as he was doing it. He shows up at the first  
9 meeting without a phone, except the phone the FBI gave him,  
10 without any identification. That's not how a normal person  
11 operates; that's how a trained spy operates. He also uses the  
12 meetings in April 2016 to try and collect information from the  
13 FBI. He's trying to gather intelligence about what the FBI  
14 knows and what they're doing. And he's not going to let the  
15 FBI set up leverage on him, so he denies, he rejects offers of  
16 money at that point.

17 And his posture was pretty clear in these meetings.  
18 He tells Special Agent Battista, it's going to take more than  
19 cookies for me to cooperate. Another time he says you can  
20 bring it.

21 And this is evidence that the defendant was still  
22 engaged in spy games. He's looking -- this is a search on his  
23 phone searching for call recorded because he wants to collect  
24 intelligence on what Special Agent Battista is saying to him in  
25 his meetings that he could then trade with Hezbollah if it

J5FKKOU2

Summation - Mr. Bove

1 suited him.

2                   Special Agent Battista brings a proffer agreement. He  
3 says you could think about this document as a way to have a  
4 legal protection for your statements. The defendant says, I  
5 don't want -- he doesn't even look at it, he says this is  
6 bullshit. He didn't care about protections for his statements.  
7 He didn't care about that in 2016, and he didn't care about  
8 that in 2017 at Seton Hall because that's not what this case  
9 was about to him.

10                  In the summer of 2016, he goes back to Lebanon, and  
11 there is this altercation that you hear about between the  
12 defendant, his wife, and his mother-in-law. Ladies and  
13 gentlemen, that was an incident of the defendant's own making,  
14 a fight that he got in with his wife. And so his story is that  
15 some members of Hezbollah shot at his house. That's entirely  
16 consistent with him being in the IJO, because other than Fadi,  
17 nobody knew that he had been in the IJO previously.

18                  And then he gets his passport taken, and he has a  
19 meeting at the U.S. Embassy with the FBI, and he says a couple  
20 of things that are important. One of them was: I have this  
21 cousin who was arrested for a material support charge in the  
22 United States, Mahmoud Kourani. Why does that matter, ladies  
23 and gentlemen? Because that shows that the defendant knew that  
24 it was a crime to be supporting Hezbollah. That's the same  
25 crime that the defendant was charged with. So if there's any

J5FKKOU2

Summation - Mr. Bove

1 suggestion here that at Seton Hall the defendant didn't  
2 understand that he had committed crimes, this puts the lie to  
3 that argument.

4 Now let's start to talk about some of the motives that  
5 the defendant had in setting up the meetings at Seton Hall.  
6 You're going to see this a couple of times. One of them was  
7 revenge. There are these text messages in his phone where he's  
8 saying to other people, I'm just going to expose everything,  
9 what you've done is just extra evidences. So Mr. Schacht is  
10 going to stand up and say, look, he wanted these meetings to be  
11 confidential, he was relying on that. Ladies and gentlemen, in  
12 September 2016, the man is telling other people, I'm going to  
13 expose this. He made his decision to provide information to  
14 the U.S. Government public before it even started. He was  
15 getting this out in the community, and he never cared about  
16 confidentiality to the extent that Mr. Schacht is going to  
17 suggest to you.

18 So March 2017, the defendant gets a lawyer to call the  
19 FBI and set up these meetings. The defendant's first motive in  
20 doing that is a combination of benefits that he wants - he  
21 wants his children to be taken from their mother in Canada and  
22 brought to the United States, he wants his father brought to  
23 the United States, so it's a combination of benefits and  
24 revenge. And you can see that in the defendant's texts, the  
25 one we already looked at, I'm just going to expose everything,

J5FKKOU2

Summation - Mr. Bove

1 but then he actually writes it down in his notes document,  
2 Government Exhibit 222, I see a way to bring my kids or take  
3 revenge. That was the defendant's mindset going into these  
4 meetings. And what is he thinking about in terms of revenge?  
5 That's elaborated on in the notes. He's saying -- let's look  
6 at the one on the bottom. He wants to put his wife's family on  
7 the no fly list, he wants to extradite another relative, and  
8 he's thinking about how this will be stressful. That's the  
9 bottom entry that's highlighted. So he wants a job that will  
10 pay him more than \$120,000.

11           What can you take from that? What the defendant had  
12 on his mind in March 2017 all involved him cooperating publicly  
13 with the U.S. Government. There was not going to be any  
14 confidentiality. People don't get extradited based on no  
15 evidence. The fact that he had provided information was always  
16 if he cooperated in the way that he wanted to, he knew it would  
17 be used, and these are the things that he's talking about  
18 doing. It was his intention.

19           So, again, this argument about the defendant expected  
20 that these meetings would be kept confidential and that promise  
21 was broken, it is belied, it is refuted, by the documents in  
22 evidence.

23           Here are the two other objectives that the defendant  
24 brought into those meetings, also an entry from his notes, his  
25 words, another mistake in discipline on his part. On the left

J5FKKOU2

Summation - Mr. Bove

1 side of the screen, you can see "collect info," and what he  
2 means by that is I'm going to use these meetings to collect  
3 intelligence about what the FBI knows, what the agents are  
4 aware of, where they are in their investigation, in case I want  
5 to go back to Lebanon and try and trade that to reestablish  
6 myself in Hezbollah.

7 On the right side of the screen, he's talking about  
8 sending a message to the community. I mean, there wouldn't be  
9 a more clear refuting of this suggestion that these meetings  
10 would be confidential. He's actually hoping to use them as a  
11 platform to send a message.

12 Before the first meeting, there's a call with  
13 Mr. Denbeaux, and two things happen during this meeting that  
14 matter. Mr. Denbeaux says: Is my client a target? And the  
15 agents basically say: We're not going to tell you that, but he  
16 knows the situation, we've talked to him a bunch. And then in  
17 the middle, what Mr. Denbeaux says next is important: The  
18 defendant, he said he doesn't even know if the defendant cares  
19 if he was a target or not. The defendant thought he was above  
20 the law. He wasn't thinking about could I be charged, what's  
21 my status in this investigation. He was there to get benefits,  
22 he was there to get revenge, he was coming to Seton Hall to try  
23 to send a message to the community.

24 The first meeting at Seton Hall, one of the most  
25 important features of this meeting is that right at the

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Summation - Mr. Bove

beginning, and multiple times throughout the meetings at Seton Hall, the agents say, look, if you lie to us, you can be charged with a crime. Why does that matter? It matters because the defendant is being told that his statements can be used against him. They're saying if you lie, we're going to prosecute you based on what happened in these meetings. So he's on notice that that could happen, that there's no promise that the meetings are going to be confidential, and he's also on notice, after March 23rd, that he's already committed a crime in the meetings, because he intentionally lied during those meetings.

What's one of the lies? He lied about when he joined the IJO. He said I joined in 2010, and he said that because he didn't want the FBI to know that his naturalization application was fraudulent, he was trying to hide that. So the defendant committed a whole separate crime of lying during that first meeting.

Agents testified that they told both the defendant and Mr. Denbeaux repeatedly that no promises were made, and this is the proof of that, ladies and gentlemen. Mr. Denbeaux says I understand you can't promise or guarantee. That's on the day of the March 23rd meeting. It couldn't be more clear. No promises were made.

Mr. Schacht opened on the fact that the agents promised things. This is a lawyer sitting in the meeting

J5FKKOU2

Summation - Mr. Bove

1 saying that that did not happen. This is an entry on the right  
2 from the defendant's notes. And it ends with: I don't want  
3 you to feel any guilt if you are not able to help me. That is  
4 the defendant's mindset coming out of those meetings. He  
5 understands that the things he has demanded have not been  
6 promised to him and that the agents might not be able to help  
7 him.

8 March 30, 2017: Supposed to be a meeting at Seton  
9 Hall, but the meeting didn't happen. What did happen was the  
10 agents sat down with Mr. Denbeaux, and they said, look, your  
11 client lied to us during that first meeting, he withheld  
12 information, that's a lie. So, Mr. Denbeaux, as of March 30th,  
13 is on notice that the defendant has committed that false  
14 statements crime during the first meetings. And they also make  
15 clear, look, this is serious business, the IJO is a terrorist  
16 organization responsible for murders of civilians. And so  
17 Mr. Denbeaux, then, is on full notice that what his client is  
18 talking about in these meetings is terrorist activity.

19 April 3, 2017: This is the second meeting, and this  
20 is where the coverup really comes in. So this is an entry that  
21 I've started on this morning, "I need a coverup - sign a  
22 contract." And this is that document. The defendant knew he  
23 wasn't going to get a contract, but he got his lawyer to slide  
24 this document across the table and try and slip in this part  
25 that says, "because it has already been agreed he has committed

J5FKKOU2

Summation - Mr. Bove

1 no crime and faces no prosecution." This was a lawyer trick  
2 perpetrated by the defendant, and the FBI did not bite. Nobody  
3 in that room believed that the defendant had committed no  
4 crime. As I said, in Beirut, the defendant described his  
5 understanding that Mahmoud Kourani had violated U.S. law on the  
6 same charges that the defendant now faces at this trial. So  
7 the defendant knew that he had committed a crime of material  
8 support to terrorism. He knew he committed naturalization  
9 fraud because he intentionally omitted that from the March 23rd  
10 meeting, and he also knew that he had lied to the agents, a  
11 third crime. So nobody sitting in the room on April 3rd  
12 actually believed that he had committed no crime. This was  
13 just a trick.

14           This other entry, "Faces no prosecution," where did  
15 that come from? Nobody ever said that to the defendant. They  
16 said just the opposite. Special Agent Shannon testified that  
17 during the first meeting, on March 23rd, 2017, it was explained  
18 to the defendant we don't make prosecutorial decisions, the  
19 Department of Justice prosecutors do, they are not in this  
20 room. So these entries in this document, they weren't  
21 misleading to the defendant. He knew that they were false.  
22 This was an intentional ploy. This was one of the steps in the  
23 coverup operation that he was thinking about, and this is what  
24 he's trying to fool you with at this trial. He's trying to  
25 convince you that he was in some way tricked into making these

J5FKKOU2

Summation - Mr. Bove

1 statements. The only tricks were played by the defendant.

2 The April 5th meeting helps you to understand that  
3 Mr. Denbeaux's role here was in some ways very limited, that  
4 the defendant was the person really driving these meetings.

5 How do you know that? Because the defendant kicked  
6 Mr. Denbeaux out of the room and decided that he would do the  
7 interview alone with Special Agent Shannon. The defendant got  
8 Mr. Denbeaux to participate in this just to try and play that  
9 game with the document.

10 The fourth meeting, the defendant identifies the  
11 buildings that he surveilled. Here, in response to this  
12 argument about confidentiality, remember, he says, I'm  
13 concerned that if I sign this document, it might get out to the  
14 public, so I'm going to have Mr. Denbeaux do it, because he  
15 knew that the agents were going to provide this information to  
16 other people.

17 Fifth meeting, more admissions, and he identifies the  
18 weapons that he used at the training.

19 In May, the defendant starts to make threats that  
20 really reveal what his motivations were.

21 May 3rd, Mr. Denbeaux says to the FBI: If you don't  
22 get him the benefits, I'm going to the media, I'm going to take  
23 this case public. Mr. Schacht is about to tell you that the  
24 defendant expected these things would be confidential. The  
25 defendant got his lawyer to threaten the FBI that he was going

J5FKKOU2

Summation - Mr. Bove

1 to take it public before he was arrested.

2 The next threat is, I'm going to go to Lebanon, on  
3 May 17th, and this is where that collect info entry in the  
4 notes matters. He's collected information and intelligence  
5 from the FBI at these meetings, and he's threatening to take it  
6 back to Lebanon to Hezbollah.

7 June 1st, this is the defendant's arrest, and here you  
8 can see the laptop, the go bag, the notes document, and you can  
9 see the combat boots that were seized in the defendant's  
10 apartment, because he was getting prepared to go back to  
11 Hezbollah and go back and fight.

12 After the defendant was arrested, he gets a new  
13 lawyer, and he decides to come in and talk to the government  
14 another time, and he signs an agreement. That agreement says  
15 nothing about confidentiality, because that was not what was  
16 motivating the defendant. The agreement did say that the  
17 government may use statements made by the defendant, the  
18 client, at the meeting to rebut any evidence or arguments  
19 offered by or on behalf of the defendant. And that provision  
20 is important because that's why you heard about what happened  
21 in this meeting, because when Mr. Schacht opened in this case,  
22 he said, look, my client went to Seton Hall, he didn't tell the  
23 truth, he didn't say all the things that happened, it wasn't  
24 all true, he was trying to trick them. That is contradicted  
25 directly by this meeting, because the defendant sat down --

J5FKKOU2

Summation - Mr. Bove

1 and, look, if there was a time where someone was going to make  
2 clear, look, I didn't actually do the things that I said I did  
3 at Seton Hall, that was all a ploy, I was trying to trick the  
4 FBI into getting some benefits, that would have been the time.  
5 There's a new lawyer, he's been arrested, immigration benefits  
6 are basically off the table, but that's not what the defendant  
7 said. You heard what he said. Look, everything that I told  
8 the FBI that I did for the IJO, that was true, I did those  
9 things.

10 So that is why you can trust and take to the bank the  
11 accuracy of the defendant's five confessions at Seton Hall. I  
12 want to be clear about those confessions. Judge Hellerstein is  
13 going to instruct you on the law at the end of this case, and  
14 one of the things that he is going to say to you, I expect,  
15 what he says controls, but I expect that what he is going to  
16 say is that, ladies and gentlemen, the statements from the  
17 defendant at Seton Hall, they were collected in a lawful way.  
18 No one's rights were violated at Seton Hall, and that's why  
19 you've heard that evidence, that's why it was admissible in  
20 this courtroom. The proof of the defendant's confessions, five  
21 of them, is a big part of the evidence of his guilt, but it's  
22 not the only part, ladies and gentlemen. You've now seen the  
23 evidence on his laptop, you've seen the email evidence, the  
24 Internet activity, you've seen those deleted chats from his  
25 Facebook account, you've seen the go bag in his apartment.

J5FKKOU2

Summation - Mr. Bove

1       Ladies and gentlemen, the evidence here is overwhelming. One  
2 confession would be enough. You have five. There's all this  
3 independent evidence demonstrating what the defendant was doing  
4 in those meetings.

5           So I ask that at the end of the arguments, and after  
6 you've heard the judge's instructions on the law, and you go  
7 back and deliberate, that you do justice here, that you do your  
8 part in helping to protect the public. This is a man who was  
9 here in the United States for years trying to set up attacks,  
10 targeting places with child centers, and now it's time for him  
11 to be held accountable. And based on all of the evidence in  
12 the case, after you've deliberated, we ask that you find him  
13 guilty on all counts.

14           Thank you.

15           (Continued on next page)

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J5FAAKOU3

## Closing Statement - Schact

1 THE COURT: Thank you, Mr. Bove.

2 May I see counsel at side bar.

3 (Continued on next page)

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Closing Statement - Schact

1 (side bar)

2 THE COURT: Mr. Schact, I can have the jury take a  
3 recess and then have you go ahead and make your statement and  
4 we actually could then have the rebuttal by Mr. Bove and finish  
5 the summations and break for lunch.

6 MR. SCHACHT: Fine with me.

7 THE COURT: Or we could have lunch now.

8 MR. SCHACHT: I would rather do the first thing you  
9 suggest.

10 THE COURT: The jury take a recess --

11 MR. SCHACHT: And then let me do --

12 THE COURT: And then Mr. Bove will follow immediately  
13 thereafter.

14 MR. SCHACHT: Then lunch, then jury charge.

15 THE COURT: Thank you.

16 (Continued on next page)

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J5FAAKOU3

## Closing Statement - Schact

1 (In Open Court)

2 THE COURT: Members of the jury, we are going to take  
3 a recess at this point for 15 minutes and then when we come  
4 back Mr. Schact will deliver his summation. Mr. Schact has  
5 advised me that he'll take less time than Mr. Bove. So, we'll  
6 see. And then following Mr. Schact, Mr. Bove will have some  
7 time but not much to do a rebuttal. Then you'll have lunch and  
8 you'll come back and I'll give you instructions. Close up the  
9 books, leave them on your chairs and keep an open mind. Do not  
10 discuss the case.

11 (Jury not present)

12 (Recess)

13 (Jury present)

14 THE COURT: Be seated, everyone.

15 We'll now hear from Mr. Schact.

16 MR. SCHACHT: Thank you very much, your Honor.

17 Members of the jury, once again you'll recall my name  
18 is Alexie Schact and I have the responsibility and the  
19 privilege to be Ali Kourani's lawyer. What I want to say to  
20 you today is that my client did commit a crime. He lied and he  
21 lied repeatedly to the FBI and that's illegal. But he was not  
22 then and he is not now, nor has he ever been a member of the  
23 IJO or 910, these different kind of names that we've heard  
24 about here.

25 What happened in this case and this is what I told you

J5FAAKOU3

Closing Statement - Schact

I think my opening statement was that my client grew up in south Lebanon close to the Israel border, we learned in a town called Yater, Y-a-t-e-r and he knows intimately because he is related both by blood and by marriage to people in Hezbollah. He knows a lot about Hezbollah. He had friends in Hezbollah. One of the things that we saw and a lot of the evidence went by quickly and there were times I think when it was hard for some people to focus. A lot of the evidence is not evidence about him. It's evidence about his friends. And so I would hope that because he is from a certain place in the world he is not held responsible for who his friends are.

So, we saw, for example, a lot of entries from Facebook. One hundred percent of those pictures on Facebook that you saw, you saw pictures of people with guns, Hezbollah flags, flashing money, all kinds of different things that were produced by the government into evidence, all of those pictures are pictures that people who he knows posted on Facebook. And luckily in the United States you can't be guilty by association. If you could be guilty by association, then you should convict by client. He has associates and he has friends and he has family members in Hezbollah.

But if you look carefully and clearly at the evidence, you will find, you will see that he himself was not a sleeper agent. In fact, the evidence will show you I think that there are no sleeper agents. This is total fiction. You heard from

J5FAAKOU3

Closing Statement - Schact

1 Dr. Levitt, who was the expert witness called by the  
2 government. Dr. Levitt, I argued with him a little bit about  
3 the nature of his expertise. He is a person who used to work  
4 at the FBI. He got paid \$550 an hour to come here and be a  
5 expert, in quotes, about Hezbollah. He told you he does not  
6 speak Arabic. He does not speak Farsi or Persian, the language  
7 of Iran that supports Hezbollah. He reads things on the  
8 Internet and he talks to other people and this is the basis of  
9 his expertise. He told you that never in history --  
10 Hezbollah's been in existence since about 1985. Forget about  
11 my client for a moment. Never in history has anyone in  
12 Hezbollah ever attacked or harmed anyone within the United  
13 States. I'm not here to defend Hezbollah. Hezbollah is a  
14 horrendous terrorist organization but it's based in the Middle  
15 East. You heard they attacked and killed people in Burgas,  
16 Bulgaria and you heard that they killed people in Argentina  
17 and, certainly, they've killed many people in the Middle East.  
18 But they are not at war with the United States.

19 In his closing statement the prosecutor showed you a  
20 quote. I think it was from Hassan Nasrallah who is the head of  
21 Hezbollah in 2008 or 2009, announcing we are at open war. I  
22 don't know what war he was talking about when he said that but  
23 he wasn't talking about open war with the United States because  
24 that statement was made 11 years ago and in that time  
25 nothing -- forget about my client, again, nothing has happened

J5FAAKOU3

Closing Statement - Schact

1 here. Nothing. We know this from their witnesses. Don't take  
2 my word for it. They told you this.

3 There are no sleeper cells here. You've heard no  
4 evidence of sleeper cells here and you've heard a lot of  
5 evidence and seen a lot of pictures of a lot of different  
6 people involved in Hezbollah, people who've committed crimes,  
7 horrible crimes, people who've done terrible things. But none  
8 of these people were doing any of these things in the United  
9 States.

10 Hezbollah, we were told a few minutes ago, has been  
11 paying the defendant's family. I would like to suggest to you  
12 and I promise you my closing statement won't take too long.  
13 So, please follow with me. Just as Mr. Bove said,  
14 Mr. Denbeaux, a prior lawyer of my client's, did a lawyer  
15 trick. I would suggest to you that the government's closing  
16 statement was an extremely artful, extremely articulate lawyer  
17 trick, selecting little facts among the different facts in the  
18 case and covering them with meaning that does not exist.

19 So, you saw a text message that my client sent to his  
20 wife where he uses the expression "fake shit". If you look at  
21 that he's not saying fake shit about himself or about his  
22 education. He's selling fake shit, counterfeit clothing.  
23 That's the business he's in. That's proven. He wouldn't be  
24 doing the counterfeit clothing business if he was really on the  
25 Hezbollah payroll. Why would he risk getting arrested which,

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Closing Statement - Schact

1 of course, he was arrested we know in 2013 for selling or  
2 possessing counterfeit boots. That makes no sense. And the  
3 reason it makes no sense is because you know from common sense  
4 and you know from the expert witness that the point of being a  
5 so-called sleeper agent which is a concept that excisions in  
6 the world is to be sleeping, not to be committing crimes  
7 everyday. It's to be asleep, acting normal. He was not acting  
8 normal. He was selling counterfeit boots. He was committing  
9 crimes on a daily basis.

10           And the government is correct. I have absolutely no  
11 doubt that all of those documents -- it's government 501B.  
12 These were the self storage Jacob Lewis documents. This is  
13 lawyer trick I'm talking about. You know that my client's in  
14 the counterfeit clothing business. You know that he's trying  
15 to hide his identity because he's committing a crime of selling  
16 counterfeit clothing so he uses a fake name, Jacob Lewis.

17           He opens this self storage Unit. It's in evidence.  
18 For some reason he actually buys and pays a little extra to get  
19 insurance. He gets the Diamond Protection Plan insurance. I  
20 suggest to you that nobody who is storing weapons gets an  
21 insurance plan for their storage Unit. If there's fire, they  
22 are not going to run to the insurance company and say, My guns  
23 were burned down. But if he has clothing in there or boots, he  
24 might.

25           Also, you'll see in the seventh page of the document

J5FAAKOU3

Closing Statement - Schact

1 there's actually an invoice for \$16,080 in jeans and short  
2 sleeved clothes to New Spot Fashion, the company that has one  
3 of those checkbooks that was found at his house. So, when I  
4 said in my opening statement there's no evidence of him being a  
5 terrorist, I contrast that to his counterfeiting business.  
6 There's abundant evidence of that. There's the storage Unit.  
7 There's stuff that's purchased. There's the fact that you know  
8 that he had a business on 27th Street in Manhattan. There's a  
9 purchase order. There's the fact that he was actually arrested  
10 for it once before and told the police, I have counterfeit  
11 boots and I make certain profits selling them.

12 The government you'll remember, introduced this in  
13 evidence. This is Government Exhibit 401E4 and you saw a lot  
14 of documents about a Nike boot. I thought what the government  
15 was trying to say and the purpose of producing this was they  
16 were going to say that this is somehow connected to a military  
17 uniform or doing some kind of terrorism. They didn't say that  
18 in the closing statement. But this is an example of what I'm  
19 talking about when I say there is evidence of things to do with  
20 clothing. There's no evidence of anything to do with  
21 terrorism.

22 Compare the two things. I asked Ms. Shields how many  
23 total entries have you put up for the jury to see? Something  
24 under 200. These are the total number of things that have been  
25 extracted from his devices over these years.

J5FAAKOU3

Closing Statement - Schact

1           Taking out from those documents you see that all of  
2 the supposedly incriminating information is on  
3 AliKourani@GMail. Why in the world would anybody who is  
4 selling counterfeit shoes disguise their name as Jacob Lewis  
5 but be a terrorist in his real name? It makes absolutely no  
6 sense. There's another e-mail address that he used called  
7 Alikuku which is almost his name. But compare this to his  
8 counterfeit business which he's in a foolish kind of half-assed  
9 way, he's trying to conceal things. Obviously, he's got the  
10 evidence in his house. So, he's not really that careful. And  
11 he's not really that smart.

12           Apologize for that.

13           He made mistakes, a lot of mistakes but if he was  
14 really a terrorist he would have made the real big mistake. He  
15 would have had guns. There's no guns. There's no proof of him  
16 ordering any guns. There would have been messages. You see  
17 what the government is capable of. Think about this they are  
18 following him. You know from the evidence they're following  
19 him for a couple of years around the world. They show up in  
20 New York in Queens. They show up in Chicago. They show up in  
21 Lebanon. They're following him through GPS. They're following  
22 him through travel. They're listening to his phone calls. He  
23 can't erase his phone calls. The FBI agents told you they were  
24 listening to his phone calls for something like two years.  
25 They were reading his texts his e-mails, his What's App

J5FAAKOU3

Closing Statement - Schact

1 messages. A lot of people think What's App is encrypted in  
2 some way. They're able to read that. They're able to recover  
3 and produce in evidence here in court things that he's actually  
4 erased.

5 So, what the government says -- and this is kind of a  
6 lawyer trick also -- is they say the things that are erased  
7 that you don't get to see are proof that he's guilty. Think  
8 about that for a minute. He erases things. So, we don't know  
9 what they are and that shows he's guilty. That makes no sense.  
10 That is not fair. That is not American. I don't know about  
11 you. You'll consult your own life experience and common sense.  
12 People erase things. People erase things for a lot of reasons.

13 He's got friends and family members who are in  
14 Hezbollah. You can imagine a lot of reasons why. They showed  
15 evidence here in his closing statement. Mr. Bove showed you  
16 that there were some things sent to him by friends about  
17 Hezbollah that the friends wanted to share with him. A lot of  
18 people might want to erase that if a friend sends you  
19 something -- and I've already told you he knows loads of  
20 people. Imagine, think about it as a close to home example.

21 Imagine you live in New York City -- and me, for  
22 example, I'm on 94th Street in Manhattan. I know people in my  
23 neighborhood. Let's say I have a friend down the block who's a  
24 drug dealer and I'm talking to my friend at the corner when I  
25 get some coffee. Let's say my friend is the kind of fool who

J5FAAKOU3

Closing Statement - Schact

1 likes to send pictures of himself with money or something like  
2 that. He sends that to me. I don't want to have that on my  
3 phone but I'm still friends with him even though he's a fool  
4 who sends me pictures like that.

5 And so you know you see he has friends who sends him  
6 pictures. Some of these things have been erased, things like  
7 this with money, friends in Lebanon with guns, all of these  
8 kind of things. And don't get me wrong. My client, I'm not  
9 defending everything about him. I'm not saying you need to  
10 like him or think he's a good guy. He grew up, remember, you  
11 know from the evidence he grew up in south Lebanon. His dad's  
12 house was blown up by the Israelis. He's sympathetic maybe.

13 I can imagine growing up in that atmosphere and  
14 thinking the Lebanese Army Hezbollah, they're defending us.  
15 I've seen my dad's house get blown up. That's not what's on  
16 trial. Liking Hezbollah, liking or disliking Israel, that's  
17 not part of this case. That doesn't make him guilty or not  
18 guilty. Really it shouldn't play any role in the case. And  
19 the judge asked you all in jury selection whether you could put  
20 aside in your deliberations the fact that he's a Muslim. The  
21 fact that he's an Arab but that's not really relevant to what's  
22 happening here, a decision about whether he's guilty or not.  
23 So, I really want to hold you to that. I really hope you can  
24 all do that.

25 And the case is not about whether you like him or you

J5FAAKOU3

Closing Statement - Schact

1 like his friends or you like his family. It's about whether he  
2 was a Hezbollah sleeper agent. And on that point there's no  
3 proof. What do I mean by "no proof"? Again, sorry for being a  
4 little repetitive. They're following him for years. They  
5 don't have one conversation. They don't have one witness, not  
6 one person who is going to say I saw him do something or I  
7 heard him say something. What they have and all they have are  
8 his statements to the FBI and obviously, those statements are  
9 highly incriminating and the question is why would he say those  
10 things? But of course, if they had more evidence they wouldn't  
11 allow a terrorist to wander around. He is wandering around.  
12 They don't arrest him because they can't arrest him because  
13 they have no evidence. That's obvious. So, the question is  
14 why would he say these things? And how would he say these  
15 things? How would he have the information? How would he know  
16 what to say?

17 This is my answer. He grew up around Hezbollah  
18 people, his wife's family you heard evidence, is in Hezbollah.  
19 He's got relatives in Hezbollah. He's got friends sending him  
20 information about Hezbollah. He's interested. He's an  
21 educated person. He's an engineer with an MBA. You see he's  
22 reading about these things. He's reading the Winograd report.  
23 He's reading Winograd report because he's interested in the  
24 world, in these things in Israel. He doesn't like Israel, I  
25 imagine, but he is interested in Israel and he is interested in

J5FAAKOU3

Closing Statement - Schact

1 things that Israel did wrong. He's interested in weapons  
2 maybe. You saw it. He looked up some things on the Internet  
3 about weapons. I say to you, so what? So what?

4 You heard from Reggie Donaldson -- I think that was  
5 his name -- the expert from the U.S. Attorney's Office. He  
6 told you on the devices, the two devices there were close to  
7 one million things collectively, e-mails, photos, videos, one  
8 million. I can't imagine what one million things would look  
9 like if we spread it out here in court. And out of these one  
10 million things, what they bring you is Facebook photos sent to  
11 him by jerky friends who may be criminals. I don't know what  
12 they are or they may just be soldiers. I don't know. Nobody  
13 knows. We don't know because we don't have the full evidence.  
14 They send you, they show you that he's erased, some messages  
15 with some trends.

16 He has a friend who likes Hezbollah. You saw the  
17 friend. He's seated in a living room type space with Hassan  
18 Nasrallah. So, that's somebody he knows. And he's got some  
19 erased messages. So, the government says this is proof that  
20 this person in this photo is a terrorist and he's a terrorist  
21 because they're erased.

22 Think about that for a second. Imagine if you have a  
23 friend who does something wrong and you have erased messages  
24 with that friend. That doesn't mean you did anything with the  
25 friend. So, what's the key question for me now? The key

J5FAAKOU3

Closing Statement - Schact

1 question is why would he say these things?

2                 The reason why, you saw he had an opportunity early on  
3 from Gary Baptista who is the head now of the Iran Hezbollah  
4 FBI Unit. He told you that he and another FBI agent and a  
5 member of a intelligence agency spoke to my client. You'll  
6 remember they offered him amazing stuff. This was amazing  
7 testimony. They stopped him. They had some coffee with him  
8 and they said, we'll pay for your kids' college. Have you ever  
9 had anybody from the government go up to you and tell you they  
10 are going to pay for your kids' college? I haven't. I doubt  
11 you have. They offered him right on the spot in cash five  
12 thousand dollars in cash even though he said to them, I'm not  
13 in Hezbollah. I don't know anything. I can't help you.

14                 And so, Agent Baptista said we wanted to compensate  
15 him for their time, for his time. This is like the 550 bucks  
16 on hour that Levitt got just to give you a sense of the kind of  
17 money the government has, the resources they can throw at these  
18 problems when they want to.

19                 So they offer this guy who they say is lying to them  
20 \$5,000 to lie to them. Can you imagine what they would give  
21 him if he told them what they wanted to know? They would pay  
22 for his kids' college. So, what happens is there's a falling  
23 out. He and his wife had a falling out. You heard evidence he  
24 had a fight with his wife, his mother-in-law. That's all true.  
25 Some people from the wife's family shoot up his family's house.

J5FAAKOU3

Closing Statement - Schact

1 He's had it. He tells the FBI, I am sick of these people in  
2 Hezbollah. You see in his notes, he even told Agent Costello,  
3 I want revenge on these people after this incident. So, this  
4 is his opportunity. Eventually, he gets a lawyer, Denbeaux.  
5 He meets with them. He wants to screw them over. He wants  
6 revenge. And so the only way to get any revenge is to say  
7 they're in Hezbollah. And how do you know that? He's got to  
8 admit something because they keep pushing him.

9                 Remember, he has a list of things. And I suggest in  
10 your deliberations, don't just take the selected little parts  
11 that Mr. Bove showed you. You could look at my client's whole  
12 notes together. And it's instructive because you'll see  
13 they're kind of like rambling stream of consciousness. I don't  
14 know how much really heads or tales you'll be able to make of  
15 it. But prominently all over the notes are the things that he  
16 wants. And so in here he talks about "no flight list", meaning  
17 trying to mess up his wife's family. He talks about what he  
18 needs to get ASAP. One of the things here says "Dad here  
19 ASAP". "Kids visas". All these kinds of things. "Money". So  
20 in his mind this is it. He's finally going to do it. I am  
21 going to get revenge on my wife's family. I am going to get  
22 money and this is where the craziness of my client's plan is  
23 clear.

24                 So, Mr. Bove gets the last word as he should because  
25 they have the burden of proof. He may say nobody confesses to

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Closing Statement - Schact

1 something like this unless it's true. And I submit to you that  
2 my client does. There's something a little wrong with him. Do  
3 you remember the testimony that came out when I was asking the  
4 agents had he ever had an interaction with somebody where the  
5 person says to them, I want you to get me an apartment in a  
6 doorman building in the middle of Manhattan? I want you to get  
7 me a job that pays \$120,000 a year. And my client sends Agent  
8 Costello his resumes. Costello has asked for any resumes.  
9 This is a bizarre crazy thing to do. I'm not saying he is  
10 mentally ill in some kind of way, that he is schizophrenic or  
11 something like that. I'm saying there's something wrong with  
12 him. His perspective was possibly off. He attaches, you'll  
13 notice if you compare the checks to his counterfeit clothing  
14 business and the resume that he gave, you'll see he actually  
15 puts on his resume that he sends to the FBI his job at the  
16 counterfeit clothing business. He seriously thinks the FBI is  
17 going to get him a job based on his resume selling counterfeit  
18 clothing. That's crazy to use a colloquial term. It's also  
19 crazy that he could think he could say, yeah, I had all of this  
20 Hezbollah training and I'm a sleeper agent here and i'm  
21 scouting out locations. All of this is totally crazy. It's  
22 not true. There's nothing to support it.

23 Think about some of the things he says, the little  
24 tells that he is lying. One of the things he said supposedly  
25 is he mentioned someplace called Birkat Jabrur where he

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Closing Statement - Schact

1 supposedly was having military training in Birkat Jabrur. How  
2 do we know that's false and made up? The way we know is  
3 because his story makes no sense.

4 He also told the FBI that they put stuff over the  
5 people's heads and drove them in a blacked-out van. Think  
6 about this. This is Hezbollah. This is one of the premiere  
7 terrorist organizations in world. Do you think that when  
8 Hezbollah takes you with your head covered in a blacked out van  
9 so you don't know where you're going, they screw up? No. You  
10 don't know where you are. That's the whole point.

11 And so if you're at the training place and you're  
12 meeting Hezbollah bigshots, they don't want anybody to know  
13 where they are for obvious reasons. They're secretive  
14 dangerous terrorists. So, he makes up the story and he fuses  
15 together all of these different ideas. How does he know this?  
16 How does he know what to say? What to make up? You see he is  
17 reading all of this stuff on the Internet. He even told them  
18 at one point, I am researching certain things. He knows who  
19 the people are. I asked Levitt, this guy Shawraba, I think his  
20 name was Mohammad Shawraba. He was one of highest ranking  
21 Hezbollah members who became an Israeli informant. This is in  
22 the newspaper. That's why I asked him that.

23 What another thing? Another thing that we know that  
24 he lied about? Think about the testimony that my client  
25 claimed that he took certain Google Earth images and put them

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Closing Statement - Schact

1 on some kind of a micro SD card or some kind of a card so he  
2 can smuggle that back to Lebanon. This makes even less sense  
3 than the Birkat Jabrur thing in the blacked-out van. Google  
4 Earth, nobody smuggles things on a disk from Google Earth. You  
5 just do that from your computer back in Lebanon. Who would do  
6 that? They want to have it both ways. They want to say he's a  
7 highly sophisticated high ranking, high IQ, highly trained  
8 terrorist. But at the same time he's doing things like this.  
9 He's using his GMail account. That is not a highly trained,  
10 highly sophisticated thing to do.

11           The boots, the Nike boots he bought them. You'll see  
12 the receipt. It's in his name on his credit card in his real  
13 name. This is not the way sophisticated terrorists work. Why  
14 would he even be using his own computer at all? Maybe you  
15 would go to an internet cafe or public library somewhere. I  
16 don't know. I am not a spy. But you can tell based on your  
17 common sense that none of that makes sense.

18           The photos, this is another example of what I'm  
19 talking about when I say a "lawyer trick". Of the million  
20 documents there were three pictures and if you look closely at  
21 the pictures they're pictures taken from the Rockefeller Center  
22 area of what appear to be possibly American sailors. Those  
23 appear to be American sailors walking around in midtown  
24 Manhattan. That's not a military installation. Of course you  
25 can say well Rockefeller Center, an important building but they

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Closing Statement - Schact

1 are not going to be there tomorrow. I don't know what they are  
2 doing. Maybe they are on Fleet Week. Maybe they live in  
3 Manhattan. Who knows? But this is not surveillance  
4 photographs. Just look at them. And of course I'm not asking  
5 you to, nor are the other million documents in evidence, but  
6 you can imagine what the other million documents are. They're  
7 innocent documents which is why you didn't see them here.

8 So, it's by picking these few things out to try an  
9 support their narrative that the government tell us the story.  
10 And of course how does someone make up a story like this in  
11 real life? Of course as I told you in my opening statement,  
12 there's certainly aspects of truth to it. What are some of the  
13 aspects of truth? The defendant knows people and Hezbollah.  
14 That's true. But look at what he tells them. Who does he  
15 know? He knows people he's related to basically. And he's not  
16 telling them anything more because he doesn't know anything  
17 more which is why he says he wants revenge. He's getting  
18 revenge on some people he's related to. People he feels angry  
19 at betrayed with, whatever.

20 So, of course some of it is true. But the key  
21 elements what makes it a crime, those things are illegal.  
22 There's nothing to support those things because, of course,  
23 liking Hezbollah or having friends in Hezbollah is not illegal  
24 in the United States.

25 Another aspect of the case that I wanted to mention is

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Closing Statement - Schact

1 the way that I think to some degree the FBI and he and Denbeaux  
2 misled each other and so I am going to say something slightly  
3 different than what Mr. Bove thought I was going to say about  
4 the confidentiality point.

5 Denbeaux may be a tricky lawyer. He may be a bad  
6 lawyer. I have no idea. But with that document that they gave  
7 to the FBI -- you'll remember this -- a document that says you  
8 committed no crime and he is not going to be prosecuted. And  
9 the agents told you, Special Agent Costello in particular, told  
10 you he didn't really care about the document because he just  
11 wanted to try and get information from Ali Kourani. I'm not  
12 telling you there's anything illegal about that. Mr. Bove is  
13 correct. That's why it's in evidence. But there's something  
14 misleading and tricky about it.

15 So, Ali Kourani could think and did think they've  
16 offered to pay for my kids' school. They're offering me  
17 thousands of dollars. They're offering me those things and if  
18 you look at his stream of consciousness handwritten notes, a  
19 lot of what is in there is what he wants and what he says  
20 they've promised to do for him. So, the fact that the FBI  
21 doesn't complain about this, they just go, OK, thanks and they  
22 give it back and they don't say, no, you're wrong. Maybe  
23 Denbeaux's trick worked because they haven't arrested him.  
24 Now, in his mind they haven't arrested him because he hasn't  
25 done anything wrong but he's thinking nothing's happening.

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Closing Statement - Schact

1           Of course I haven't commit any crime. After of the  
2 five meetings at Seton Hall, they let me leave. Why do they  
3 let me leave? I haven't really done anything. And the FBI  
4 knows I haven't really done anything. The FBI is not going to  
5 allow a terrorist to run around. But eventually, they decide  
6 we think he's holding back and so they arrest him because they  
7 are basically disappointed or angry with them.

8           And so when he says my brother-in-law's in Hezbollah  
9 or my brother's in Hezbollah, those things may be true. But  
10 there's nothing to corroborate the fact that he was a sleeper  
11 agent. Nothing. And Mr. Bove talks about the travel back and  
12 forth at different documents and things. I submit to you that  
13 if you look closely at this evidence, that proves nothing.  
14 Because it only backs into the story that my client tells when  
15 my client says oh, I had some training in 2011. Obviously, in  
16 his head he knows when he went to Lebanon. So, he has to say I  
17 had training in 2011. He can't say I had training in 2015 if  
18 the FBI was following him and meeting him in Chicago because he  
19 wasn't in Lebanon in 2015.

20           So, it's just confirming because if you think about  
21 your own life experience how does somebody lie, somebody's  
22 cheating on their wife. They don't say, I was in Japan if they  
23 were as an alibi unless they were in Japan. People say  
24 something that comes from their real life experience to cover  
25 whatever it is or to make up the lie that they want to make up.

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Closing Statement - Schact

1 So his lies more or less match their aspects his life  
2 experience. He can't say I'm part of al-Qaeda or ISIS because  
3 that has nothing to do with his life. They're enemies of  
4 Hezbollah and so it has to somewhat match. Also, it has to  
5 match because the people he wants revenge against are those  
6 very same people from Hezbollah.

7 Finally, I would ask and again, like Mr. Bove said the  
8 judge is going to instruct you on the law. Listen closely to  
9 the whole instruction but please in particular listen closely  
10 to the instruction on what a reasonable doubt is. And I would  
11 ask that you consider this case as you should like in any  
12 important decision in your own life.

13 When we make decisions am I going to buy a house? Am  
14 I going to get Harried? Am I going to get divorced? Should I  
15 have children? What is the level of certainty around the most  
16 important decisions in our life that we need to have? And I  
17 suggest to you that looking at this case through that lens you  
18 cannot have certainty that degree of certainty beyond a  
19 reasonable doubt. Certainty.

20 What happened here, my client made up some stories  
21 because he had some insane cockeyed idea about getting a  
22 highrise apartment and having his kids' college tuition paid  
23 for and getting revenge on relatives. And so he made up a  
24 story that comes from his own life experience but for which  
25 there is no support. If someone like him who sells counterfeit

J5FAAKOU3

Rebuttal - Bove

1 clothing said to you anything and who's a fan and has friends  
2 with pictures of guns, you wouldn't credit what he says. You  
3 wouldn't make an important decision in your life based upon  
4 what he says. Nobody would. And that's the problem obviously  
5 for the government is so that's why the government's summation  
6 lists all these other pieces of evidence before even getting to  
7 the summation when we know the -- not the summation -- to the  
8 confession. Those five confessions at Seton Hall, all of that  
9 evidence is the only evidence because they have been following  
10 him and they had all the other evidence ahead of time. They  
11 have been listening to his calls and they didn't arrest him.  
12 In fact, they didn't even arrest him until a little bit after  
13 the fifth meeting. We don't know what they were thinking. I  
14 can't speculate. You can't speculate about why they didn't  
15 arrest him after the first meeting but there is simply not  
16 enough evidence to convince you beyond a reasonable doubt that  
17 he was a sleeper agent for Hezbollah.

18 Thank you.

19 THE COURT: Thank you, Mr. Schact.

20 Mr. Bove.

21 MR. BOVE: May I proceed, judge?

22 THE COURT: Yes. This has to be brief, Mr. Bove.

23 MR. BOVE: Yes, your Honor.

24 Ladies and gentlemen, that was truly incredible. The  
25 defendant in this case confessed five separate times and I

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Rebuttal - Bove

1 spent two hours this morning going through all the evidence  
2 that corroborates that confession. The defendant's travel  
3 records corroborate it, the evidence on his laptop, the  
4 evidence from his e-mail accounts, the evidence seized from his  
5 apartment.

6 So, now the argument made to you by defense and they  
7 don't have any burden. The burden is entirely on the  
8 government. But the argument is, well, the defendant went to  
9 Seton and he decided to make all of that up. It was a lie.  
10 That's ridiculous. Who would do that? Who would put  
11 themselves in a position that the defendant did unless these  
12 things were true? Who would admit to targeting a building  
13 across the street with a daycare center if that hadn't  
14 happened? No one. The defendant told the truth in those  
15 meetings in the documents to back this up. Mr. Schact just  
16 made a big deal about why would anyone just do Google Earth  
17 research and bring it back to Lebanon? The defendant  
18 absolutely did that.

19 Ms. Shields, can we take a look at 222.

20 He wrote down that he did that. everything else of  
21 Google Earth online research was true. His writing, coupled  
22 with what he'd seen when he described that, that's how you know  
23 he's guilty. These are the Google searches that I showed you  
24 earlier he did at 26 Federal Plaza in March 2013. He did those  
25 searches before the Seton Hall meeting. He created a trail.

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Rebuttal - Bove

1 And that trail is now before you to show that you that these  
2 things actually happened. The defendant did the things for the  
3 Islamic Jihad Organization that he admitted to at Seton Hall.

4 How else do you know that this proffer meeting that I  
5 talked about earlier, the one happened after the defendant was  
6 arrested, he's got a new attorney. Circumstances are  
7 completely changed. He's been arrested. He now sees these  
8 charges. If it were really the case that the defendant had  
9 made all these things up at Seton Hall, wouldn't that be the  
10 time to bring that up? Wouldn't that be the first words out of  
11 your mouth? Yes. Yes. Yes.

12 Just use your common sense on that one, ladies and  
13 gentlemen, because what did the defendant say in that proffer?  
14 Yes, everything that I did, everything I described at Seton  
15 Hall, I did. And that admission on June 2, 2017, the only way  
16 that it makes sense is in the context of all the other  
17 evidence, the fact that he went to Seton Hall to try and get  
18 revenge, to try and get some benefits, to try and send a  
19 message to the community and he admitted to doing those things  
20 and so you know that is true from the other evidence, the  
21 Google searches from his notes, here are more notes where he  
22 writes down the armories that he researched. He couldn't make  
23 this up on the fly. These are the records relating to the  
24 e-mail account that his handler used.

25 Ladies and gentlemen, these things happened and the

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Rebuttal - Bove

1 defendant admitted to them because they were true. He is not  
2 crazy like. I said earlier, he is no fool. He was arrogant,  
3 deeply arrogant. He thought he was above the law and that he  
4 could come into those meetings and describe these things and  
5 that at that point in the investigation the agents were just  
6 going to shower him with cash.

7 But remember how the meetings with Special Agent  
8 Baptista ended. He said it's going to take more than cookies.  
9 Bring it. You are going to need more than that. So, that is  
10 what happened here. And the FBI continued to investigate.  
11 Then the defendant came to Seton Hall and he confessed.

12 Now, a lot of other things that Mr. Schact said to you  
13 today are just invitations to be distracted, to ignore the  
14 evidence that's here which is five separate confessions and the  
15 electronic evidence we talked about and wonder about why there  
16 aren't other pieces evidence. Well, I can address some of  
17 those questions.

18 Why aren't there phone calls from the defendant's  
19 phone? Why wasn't the FBI able to intercept calls? Because he  
20 wasn't using his phone. He admitted to that. He was going to  
21 Lebanon and people were calling his brother and his father.  
22 There weren't any calls to intercept. Why didn't the FBI  
23 intercept What's App messages? Because he wasn't using What's  
24 App. They were using this pretty primitive pager system to  
25 communicate because they knew the FBI can intercept these

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Rebuttal - Bove

1 things. This is how spies work. This is how the defendant  
2 worked. This is why he was guilty.

3 (Continued on next page)

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Rebuttal - Mr. Bove

1                   MR. BOVE: (Continuing) One of the other things that  
2 Mr. Schacht said is that, look, this sleeper cell thing, you  
3 know it's a myth, there are no sleeper cells here in the United  
4 States, Hezbollah hasn't targeted the U.S. Hezbollah targeted  
5 the United States in the opening letter in 1985 that I laid out  
6 for you this morning. There are sleeper cells here. The  
7 defendant described them, and there have been Hezbollah  
8 operatives arrested in the United States for supporting  
9 Hezbollah. The defendant described that to Special Agent  
10 Battista at the meeting in Beirut. So there are Hezbollah  
11 operatives here in the United States, the defendant was well  
12 aware of it, and this idea that there is no real threat here  
13 and -- it's a complete sideshow. That's not the issue. The  
14 issue is: Did the defendant do the things that he's charged  
15 with? Did he provide support and services to Hezbollah? Did  
16 he receive military training from Hezbollah? Did he lie on  
17 that naturalization application?

18                   The answers to those questions are yes.

19                   And let's keep in mind: If the defendant was going to  
20 come to Seton Hall and just make some things up to get  
21 benefits, wouldn't he have done a better job of lying? There  
22 are things he refused to tell the FBI. The FBI wanted to know  
23 what he was doing in China related to the ammonium nitrate and  
24 the ice packs. He didn't provide that information. The FBI --  
25 even on simple things, the IJO said -- excuse me, the FBI

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Rebuttal - Mr. Bove

1 asked: Look, you got this tour of South Lebanon, where did  
2 they take you? He said: Oh, I'm not going to tell you that.  
3 The Israelis might find that information helpful. I'm going to  
4 withhold that. If the defendant was in these rooms at Seton  
5 Hall five separate times making things up just to please the  
6 FBI, he would have answered all their questions, and he would  
7 have told a different story. But he was careful about what he  
8 said in there, and what he admitted to was true, and you know  
9 that from these other documents that are in the record.

10 Think about the Facebook chats - I think Mr. Schacht  
11 called that a lawyer trick. Let's focus on the ones with  
12 Mohammad Sadek. The reason that those deleted chats, 98  
13 deleted chats, matter is the timing, ladies and gentlemen.  
14 It's not just that the defendant deleted them, it's not just  
15 that he deleted chats with somebody who's sitting on the couch  
16 next to the Secretary General of Hezbollah, he deleted those  
17 chats because they happened immediately before and immediately  
18 after he went to Lebanon to get military training. So it's the  
19 timing that shows you that he deleted them because they were  
20 incriminating.

21 Last point: One of the other things that Mr. Schacht  
22 just said to you is that there's no evidence of attacks by  
23 Hezbollah in the United States. You haven't heard anything  
24 about that. Well, there's certainly no question that Hezbollah  
25 was targeting the United States. And the FBI doesn't have to

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Rebuttal - Mr. Bove

1 wait, they don't have to wait until something tragic happens.

2 The government doesn't have to wait until these attack planning  
3 missions are successful. You don't have to wait. This

4 argument does not matter, that they were unsuccessful. The FBI  
5 did their jobs here. They disrupted a serious terrorist threat  
6 by approaching this man, saying, look, we're watching you.

7 That happened in 2016, and he stopped. And in 2017, he  
8 confessed five times. He asked for those meetings, he brought  
9 the FBI there, and he admitted to things that make him guilty.

10 You know those confessions are true because of all of the other  
11 things that we talked about this morning.

12 So I ask you to listen to the Judge's instructions  
13 carefully. You're going to hear what the elements are. You're  
14 going to hear that it wasn't necessary for the defendant to  
15 complete an attack in the United States to be guilty of these  
16 crimes. It wasn't even necessary for him to successfully  
17 provide services to Hezbollah, just an attempt to do that was  
18 enough because this is so dangerous.

19 Listen to the Judge's instructions about the  
20 conspiracy charges. It doesn't matter if he was successful.  
21 Just the agreement to do these things is so dangerous, that  
22 these are federal crimes, they're serious ones, and we have  
23 proven that they were committed by the defendant, the defendant  
24 sitting here in this courtroom, based on his confession, all  
25 five of them, based on the laptop evidence, email accounts, the

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Rebuttal - Mr. Bove

Facebook records in his own handwriting, ladies and gentlemen. These are his notes, the entry I just showed you, everything I did on Google Earth was true.

Ladies and gentlemen, the defendant is guilty, he's guilty of all the charges in the indictment, and we ask that you return that verdict after your deliberations.

Thank you.

THE COURT: Thank you, Mr. Bove.

I think now, members of the jury, will be a good time for lunch. When you come back, I will deliver the instructions, and you will begin to deliberate.

In a moment Ms. Jones will be out to receive your books. It's 1:15 now. What's the shortest time you can come back? 2:00? 2:15.

JUROR: 2:15.

THE COURT: 2:15. Okay, come back at 2:15.

Close up your books, give them to Ms. Jones on your way out. Do not discuss the case. You may feel that you know the case, that's all safe, everything else the lawyers have summed up, but you must wait to hear the law that is to be applied to the case. Keep an open mind and don't discuss the case. I'll see you at 2:15.

(Jury not present)

THE COURT: Okay. We're recessed until 2:15.

(Luncheon recess)

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1                   AFTERNOON SESSION

2                   2:20 P.M.

3                   (In open court; jury not present; trial resumed)

4                   MR. SCHACHT: Your Honor, do you know, have you  
5 decided how late you're going to keep them tonight?

6                   THE COURT: They'll decide.

7                   MR. SCHACHT: Okay.

8                   (Continued on next page)

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1 (Jury present)

2 THE COURT: Be seated, everyone.

3 Members of the jury, it's my practice, out of  
4 deference for you, to stand while I deliver the charge, but  
5 with eight counts, this charge can come up to about two hours,  
6 and my arthritic hip won't allow it, so with your permission,  
7 I'll sit.

8 My friend says that when you get to a certain age, the  
9 topic of conversation when a few people meet are body parts.  
10 It's very boring.

11 What I'm about to do, ladies and gentlemen, is to  
12 deliver the instructions that deal with one of the main  
13 standards of a constitutional right that deal with a jury  
14 trial; namely, the presumption of innocence and reasonable  
15 doubt. And I will discuss the eight counts alleged in the  
16 indictment and what the government has to prove with respect to  
17 each count, and then I'll give you some guides on dealing with  
18 various aspects of evidence, and, finally, we'll talk a little  
19 bit about the methods of deliberations.

20 First, I want to thank you. You have been a very  
21 attentive and patient jury. The evidence has been detailed,  
22 and even though the subject is interesting, there's a great  
23 difficulty in keeping attentive throughout a long time. You've  
24 done it, and I appreciate that very much.

25 I also want to remind you -- and I will say this

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1 again, maybe a number of times -- how crucial a role you play.  
2 There's nothing like the way the United States Constitution  
3 guarantees the right to trial by jury. No other country has  
4 it, at least not in the same form. You come in here, and I  
5 think you've seen it throughout this trial, that you are  
6 participants in the delivery of equal justice under the law.  
7 Without that, our country would not be where it is. We have  
8 many faults, but one of the great things about this country and  
9 about this Court is that we deliver justice fairly and  
10 impartially, with equal justice under the law. We have you to  
11 thank for this, you and your colleagues that form the juries in  
12 this courtroom. I don't decide the facts, you do. My job is  
13 to give you the law. It's your job to accept the law as I give  
14 it to you and to apply the law to the facts, but no one can  
15 interfere with your job as jurors - to listen, to decide fairly  
16 and impartially and in accordance with the record, and come to  
17 a decision. That's your province, and nothing can take that  
18 away.

19 As I say, I have to give you the law not because I'm  
20 wiser than anybody else, but it's my job, it's my function as a  
21 judge, to run a trial fairly and efficiently and to give you  
22 the law of the case that you have to apply.

23 Consider my instructions as a whole when you  
24 deliberate rather than singling out any one instruction as  
25 stating the law. You should not be concerned about the wisdom

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1 of any rule that I state. Regardless of any opinion that you  
2 may have about what the law may be, or ought to be, or should  
3 be, it would violate your sworn duty to base a verdict upon any  
4 view of the law other than that which I give you in these  
5 instructions.

6 A defendant begins trial presumed to be innocent of  
7 the allegations against him. I instruct you that a defendant  
8 is presumed by you to be innocent throughout your deliberations  
9 until such time, if ever, that each of you is satisfied that  
10 the government has proved every element of the charged crime or  
11 crimes against the defendant beyond a reasonable doubt. This  
12 presumption of innocence alone is sufficient to acquit the  
13 defendant unless you, as jurors, are unanimously convinced  
14 beyond a reasonable doubt of the defendant's guilt, charge by  
15 charge, after a careful and impartial consideration of all the  
16 evidence in the case.

17 The defendant has pleaded not guilty, and, thus, the  
18 government has the burden to prove the charges against the  
19 defendant beyond a reasonable doubt. This burden remains with  
20 the government throughout the entire trial and never shifts to  
21 the defendant. The law never imposes upon a defendant in a  
22 criminal case the burden or duty of calling any witness, or  
23 producing any evidence, or proving himself or herself innocent.  
24 Likewise, under our Constitution, a defendant has no obligation  
25 to testify because it is the government's burden to prove a

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1 defendant guilty beyond a reasonable doubt. If the government  
2 fails to sustain its burden of proof as to any count, you must  
3 find the defendant not guilty of that count.

4 I've referred to reasonable doubt. The question  
5 naturally arises: What is reasonable doubt? The words almost  
6 define themselves. A reasonable doubt is a doubt based upon  
7 reason and common sense. It's a doubt that a reasonable person  
8 has after carefully weighing all of the evidence. It's a doubt  
9 that would cause a reasonable person to hesitate to act in a  
10 matter of importance in his or her personal life. Proof beyond  
11 a reasonable doubt must, therefore, be proof of such a  
12 convincing character, that a reasonable person would not  
13 hesitate to rely and act upon it in the most important of his  
14 or her own affairs.

15 The law does not require that the government prove  
16 guilt beyond all possible doubt. A reasonable doubt is not a  
17 caprice or whim, it's not a speculation or a suspicion, it's  
18 not an excuse to avoid the performance of an unpleasant duty.  
19 It's not sympathy.

20 It's the government's burden to prove each of the  
21 elements of the crimes charged beyond a reasonable doubt. The  
22 defendant is under no duty to present evidence. Nor do you  
23 have to accept the testimony of any witness, even one who has  
24 not been contradicted or impeached, if you find that witness  
25 not to be credible. You decide which witnesses to believe and

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1 which testimony is true. You must look at all the evidence,  
2 drawing upon your common sense and personal experience.

3 If, after fair and impartial consideration of all the  
4 evidence or lack of evidence in the case, you have a reasonable  
5 doubt as to the guilt of the defendant on a particular count,  
6 then it's your duty to acquit the defendant of that charge, by  
7 checking the box "Not guilty" on the verdict sheet, which I  
8 will explain in a bit.

9 On the other hand, if, after fair and impartial  
10 consideration of all the evidence, you are satisfied of the  
11 defendant's guilt beyond a reasonable doubt, then you should  
12 vote to convict by checking the "Guilty" box on the verdict  
13 sheet.

14 The fact that the government is a party and that the  
15 prosecution is brought in the name of the United States of  
16 America does not entitle the government or its witnesses to  
17 greater or lesser consideration than that given to any other  
18 party. All parties, whether government or individuals, stand  
19 as equals at the bar of justice.

20 The evidence before you consists of the answers given  
21 by witnesses -- that's their testimony -- the exhibits that  
22 were received in evidence, and the stipulations of the parties.  
23 Your verdict must be based solely upon the evidence developed  
24 at trial or the lack of evidence.

25 The defendant, Ali Kourani, is entitled to the

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1 presumption of innocence, and it would be improper for you to  
2 allow any personal feelings you might have about the nature of  
3 the crime charged, or the person, or anything else that's not  
4 derived from the merits to interfere with your decision-making  
5 process. Your verdict must be based exclusively upon the  
6 evidence or the lack of evidence in the case.

7 You may not consider any answer, testimony, or  
8 exhibits that I directed you to disregard or that I directed be  
9 stricken from the record. If an answer was stricken, you must  
10 entirely disregard it as though the words were never spoken.  
11 Similarly, if an objection to a question was sustained before  
12 the witness answered, you must disregard the question and draw  
13 no inference from the wording of the question or speculate what  
14 the witness might have answered.

15 The charges against the defendant are set forth in an  
16 indictment. An indictment is a formal method of accusing a  
17 defendant of one or more crimes. The indictment is not  
18 evidence, and no weight or significance should be given to it  
19 or the allegations contained in it. All an indictment is is an  
20 accusation which sets the boundaries of what the government has  
21 to prove, and the defendant is not charged with committing any  
22 crime other than the crimes alleged in the indictment. The  
23 defendant has denied these charges. As I say, he is entitled  
24 to a presumption of innocence, and it's the government's  
25 obligation to prove the charges, each of them, and each

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1 element, beyond a reasonable doubt.

2                   The indictment contains eight counts. Count One  
3 charges that from at least in or about 2002 up to and including  
4 in or about September 2015, the defendant provided, or  
5 attempted to provide, material support or resources to a  
6 foreign terrorist organization, Hezbollah.

7                   Count Two charges that at least in or about 2002 up to  
8 and including in or about September 2015, the same time period,  
9 the defendant participated in a conspiracy to provide material  
10 support or resources to Hezbollah.

11                  Count Three charges that in or about 2011, the  
12 defendant received military training from Hezbollah.

13                  Count Four charges that in or about 2011, the  
14 defendant participated in a conspiracy to receive military  
15 training from Hezbollah.

16                  Count Five charges that from at least in or about 2002  
17 until at least in or about September 2015, the defendant  
18 participated in a conspiracy to use and carry machine guns or  
19 destructive devices in connection with the crimes of violence  
20 charged in Counts One, Two, Three, and Four and to possess  
21 machine guns or destructive devices in furtherance of those  
22 crimes of violence.

23                  We'll go over this in detail. I'm just giving you the  
24 introductory outlines.

25                  Count Six charges the defendant from at least in or

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about 2002 up to and including in or about September 2015, the defendant violated, or attempted to violate, an executive order and regulations issued pursuant to a law called the International Emergency Economic Powers Act, IEEPA, by making and receiving, and attempting to make and receive, contributions of funds, goods, and services to Hezbollah.

Count Seven charges from at least in or about 2002 until at least in or about September 2015, the defendant participated in a conspiracy to violate an executive order and regulations issued pursuant to IEEPA by making and receiving contributions of funds, goods, and services to and from Hezbollah.

Count Eight charges that from at least in or about 2009, the defendant unlawfully procured U.S. citizenship by naturalization in order to facilitate one or more acts of international terrorism.

Each count, One through Eight, alleges a separate crime. You must consider each count of the indictment separately, and you must return a separate verdict on each count in which the defendant is charged.

I'm going to give you a verdict sheet. You can't see it here, but the foreperson will have it, and it will guide your determinations.

So the first question is Count One: Provision of material support or resources to Hezbollah, how do you find the

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1 defendant? And there's a box for guilty and a box for not  
2 guilty.

3 For Count Two, the conspiracy to commit the crime  
4 alleged in Count One -- and conspiracy, as I'll tell you, is a  
5 separate and independent crime from the crime that is the  
6 object of the conspiracy -- same question: How do you find the  
7 defendant, guilty or not guilty?

8 Count Three: Receipt of military training from  
9 Hezbollah. Again, it has the same boxes, and that continues  
10 with Count One through Eight.

11 The defendant has pleaded not guilty to each count.  
12 Thus, he denies the charges alleged against him. In essence,  
13 he says that he did not commit the offenses charged in the  
14 indictment. He has a presumption of innocence that works for  
15 him. The government has the obligation to prove each element  
16 of these offenses beyond a reasonable doubt in order for you to  
17 find the defendant guilty. The defendant is not required to  
18 disprove any element of any count charged.

19 The indictment, as I read, contains eight counts. As  
20 I said, each count charges a separate crime. I think I've said  
21 what I'm just about to say, so I'll skip this part.

22 Now I'm going to go into each of the substantive  
23 crimes, and break them apart, and define their terms.

24 Count One of the indictment charges that from at least  
25 in or about 2002 up to and including in or about

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September 2015 -- and you will see that, that's a time period for most of the counts -- in the Southern District of New York -- that's this court and this district. The Southern District of New York is made up of Manhattan, Bronx, Westchester, Putnam, Rockland, and counties across the Hudson to the west. So that from at least in or about 2002 up to and including September 2015, in the Southern District of New York, Lebanon, and elsewhere, Ali Kourani, the defendant, knowingly did provide, and attempt to provide, material support or resources to Hezbollah, knowing that Hezbollah was a designated foreign terrorist organization, that Hezbollah engages and has engaged in terrorist activity, or that Hezbollah engaged and has engaged in terrorism. So either it was a designated foreign terrorist organization, or it engaged in terrorist activity, or it engaged in terrorism.

In order to sustain its burden of proof with respect to Count One, the government must prove beyond a reasonable doubt:

First, that the defendant provided material support or resources to Hezbollah, or attempted to do so;

Second, that the defendant acted knowingly and intentionally, including with knowledge that Hezbollah was one of the following: A designated terrorist organization, that it engaged in or engages in terrorist activity, or that it has engaged or engages in terrorism;

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1           And third, that one of the jurisdictional requirements  
2 of the statute is satisfied. Jurisdiction is a condition which  
3 gives a particular court authority to hear a particular case  
4 against particular people. So there are certain factual  
5 elements that had to be proved by the government in order for  
6 this court to have jurisdiction, in order to have the  
7 competence and authority to hear the case.

8           Now let me do this element by element.

9           First, the government has to prove beyond a reasonable  
10 doubt that the defendant provided material support or resources  
11 to Hezbollah.

12           I'm going to define these terms. "Material support or  
13 resources" is defined by the statute to include "any  
14 property...or service, including currency or monetary  
15 instruments," "Training, expert advice, or assistance, safe  
16 houses, false documentation or identification, communications  
17 equipment, facilities, weapons, lethal substances, explosives,  
18 personnel...and transportation." So if you've given one or  
19 more of those, you've given material support or resources.

20           "Material support or resources" does not include  
21 medicine or religious materials. The defendant does not need  
22 to have joined or become a member of the foreign terrorist  
23 organization in order to have provided material support or  
24 resources to the organization.

25           The words weapons, lethal substances and explosives

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1 have the meaning that you understand them to have in ordinary  
2 English.

3 Training means instruction or teaching designed to  
4 impart a specific skill, as opposed to giving of general  
5 knowledge.

6 Giving expert advice or assistance means advice or  
7 assistance that's derived from scientific, technical, or other  
8 specialized knowledge.

9 Personnel refers to one or more people jointly engaged  
10 in a common undertaking. The word "personnel" includes the  
11 defendant himself. It can -- in other words, one can  
12 contribute himself, his own talents, and time and energy, to an  
13 organization and be guilty for it if the government proves the  
14 requisite conditions.

15 JUROR: Your Honor?

16 THE COURT: Yes.

17 JUROR: Will we be getting a reference sheet with this  
18 information, or --

19 THE COURT: No, you will not.

20 JUROR: -- should we just write it all down?

21 THE COURT: Yes.

22 So the word "personnel" can include the defendant  
23 himself or other people. A person provides personnel, as that  
24 term is defined in the statute, if he provides Hezbollah with  
25 himself or one or more individuals to work under Hezbollah's

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1 direction or control.

2           A person provides services, as that term is defined in  
3 the statute, when a person performs work commanded or paid for  
4 by another or done for the benefit of a foreign terrorist  
5 organization, here, Hezbollah. Only work performed in  
6 coordination with, at the direction of, or for the benefit of  
7 Hezbollah meets the definition of service.

8           If you find beyond a reasonable doubt that the  
9 defendant provided material support or resources of any of the  
10 types described in the statute, the element is satisfied. You  
11 must agree unanimously with respect to at least one of the  
12 forms of material support or resources that the defendant  
13 provided.

14           So, members of the jury, I gave you a listing of a  
15 dozen categories of material support or resources. In your  
16 deliberations, in order to find the defendant guilty of this  
17 element, you must agree as to the particular one or more forms  
18 of assistance that the defendant gave. I'm going to read the  
19 list again.

20           Any property or service, including currency or  
21 monetary instruments, training, expert advice or assistance,  
22 safe houses, false documentation or identification,  
23 communications equipment, facilities, weapons, lethal  
24 substances, explosives, personnel -- that's himself or  
25 others -- and transportation, but not medicine or religious

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1 materials.

2           The second element of this count that the government  
3 has to prove beyond a reasonable doubt is the defendant acted  
4 knowingly and intentionally. And these words, too, require  
5 definition.

6           To prove that the defendant acted knowingly, the  
7 government must prove that he acted voluntarily and not because  
8 of mistake or accident.

9           To prove that the defendant acted intentionally, the  
10 government must prove that the defendant acted deliberately and  
11 purposefully. That is, a defendant's acts must have been the  
12 product of his conscious, objective decision, did know about  
13 it, intended it, then it should have been deliberate.

14           The government also must prove that the defendant had  
15 one or more of the following three types of knowledge: (a)  
16 knowledge that Hezbollah had been designated by the Secretary  
17 of State as a terrorist organization, or (b) knowledge that  
18 Hezbollah engaged in or engages in terrorist activity, or (c)  
19 knowledge that Hezbollah engaged in or engages in terrorism. I  
20 will define these terms.

21           The parties have stipulated that Hezbollah, which  
22 includes the Islamic Jihad Organization, was designated by the  
23 Secretary of State as a foreign terrorist organization in 1997,  
24 and that Hezbollah remains designated continuously up to today.

25           So you know that Hezbollah was designated by the

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1       Secretary of State as a terrorist organization, but it's a  
2       subject of proof and dispute if the defendant knew that or  
3       acted intentionally with respect to that. So it's either that  
4       or the other two conditions. One of them is terrorist  
5       activity. That includes highjacking or sabotage of an  
6       aircraft, vessel, a vehicle, train, or other conveyance;

7                 Seizing, detaining, or threatening to kill, injure, or  
8       further detain another person to compel or coerce some third  
9       party, including a government, to do or abstain from doing some  
10      act;

11                 3. A violent attack upon an internationally protected  
12      person, including employees and officials of governments or  
13      international organizations;

14                 4. Assassinations;

15                 5. Use of any chemical, biological, or nuclear  
16      weapons or device with intent to endanger, direct or  
17      indirectly, the safety of one or more individuals or to cause  
18      substantial damage to property;

19                 6. Use of any explosive, firearm, or other weapon or  
20      dangerous device other than for monetary gain and with intent  
21      to endanger, directly or indirectly, the safety of one or more  
22      individuals or to cause substantial damage to property;

23                 Or 7. A threat, attempt, or conspiracy to do any of  
24      the foregoing.

25                 Those are the definitions of terrorist activity, and

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1 they may include any of these seven items.

2                 The term "terrorism" means premeditated, politically  
3 motivated violence perpetrated against noncombatant targets by  
4 subnational groups or clandestine agents. In other words, if  
5 some group within a nation, but not an overall nation, or  
6 agents of a group engage in terrorism -- that is, the  
7 premeditated, politically motivated violence -- that would be  
8 terrorism.

9                 The government must prove beyond a reasonable doubt  
10 that the defendant had knowledge that Hezbollah had been  
11 designated by the Secretary of State as a terrorist  
12 organization or that Hezbollah engaged in or engages in  
13 terrorist activities of the type I have listed, or that  
14 Hezbollah engaged in or engages in terrorism. The government  
15 must prove only one of these three categories of knowledge  
16 beyond a reasonable doubt. Again, you must be unanimous as to  
17 which one, or more, of the three they proved.

18                 One species of knowledge is when a person knows  
19 something, but makes believe it isn't so. In determining if  
20 the defendant acted knowingly, you may consider if the  
21 defendant deliberately closed his eyes to what otherwise would  
22 have been obvious. A person cannot willfully blind himself to  
23 that which is obvious and disregard what is plainly before him.  
24 If you find beyond a reasonable doubt that, during the relevant  
25 time period, the defendant was aware that there was a high

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1 probability that the offense was being committed, but  
2 deliberately and consciously avoided confirming this fact, then  
3 you may treat this deliberate avoidance of positive knowledge  
4 as the equivalent of knowledge, and you can find that this  
5 element is satisfied, unless you find that the defendant  
6 actually believed that he was acting in a lawful manner or that  
7 his lack of knowledge was due to mere carelessness, negligence,  
8 or recklessness.

9                 The instruction I just gave applies to the issue of  
10 knowledge. It does not apply to the issue of intent. One  
11 cannot intend to commit a crime unless the person has the frame  
12 of mind to do it. And one cannot attempt to commit an offense  
13 unless the person specifically intends to commit the crime.

14                 The third element that the government must prove has  
15 to do with the Court's competence and authority to act. The  
16 government must prove one of three things:

17                 The offense occurred, in whole or in part, within the  
18 United States;

19                 Or the offense occurred in or affected interstate or  
20 foreign commerce;

21                 Or the defendant is a national of the United States.

22                 Interstate or foreign commerce includes the movement  
23 of goods, services, money, or people from one state to another  
24 or between the United States and a foreign country. If the  
25 offense could have a potential effect on interstate or foreign

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1 commerce in any way, no matter how minimal, it is sufficient.  
2 It's not necessary to prove that the defendant's particular  
3 acts affected interstate or foreign commerce as long as the  
4 offense as a whole could have had such a potential effect. The  
5 defendant does not have to know that his acts affected or could  
6 potentially affect interstate or foreign commerce, all that's  
7 important is that he do so.

8 The term "national of the United States" includes a  
9 citizen of the United States, either a natural-born citizen,  
10 one born here, or a naturalized citizen, one who became a  
11 citizen through a naturalization process. Both are considered  
12 nationals of the United States. And, again, you have to agree  
13 on the particular criteria or more that is involved. So,  
14 again, there are three: The offense occurred in whole or in  
15 part within the United States;

16 Second, the offense occurred in or affected interstate  
17 or foreign commerce;

18 Or (c) the defendant is a national of the United  
19 States.

20 Any one of those three will do to give the Court  
21 competence and authority to act.

22 JUROR: Your Honor, may I ask another question?

23 THE COURT: You may. I wish any of you who have  
24 questions would ask them of me.

25 JUROR: On the last point about being a national of

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1 the United States, if we found, in the last -- in the eighth  
2 count that that was -- there was something --

3 THE COURT: Great question, and the answer is no. If  
4 he procured naturalization through fraud --

5 JUROR: Yes.

6 THE COURT: -- he's still a national.

7 JUROR: That is what I wanted to know. Thank you.

8 THE COURT: It's the standards conferred by the  
9 naturalization that counts.

10 JUROR: Thank you.

11 THE COURT: Any objection?

12 MR. SCHACHT: Yes, your Honor.

13 THE COURT: Step up, please.

14 (Continued on next page)

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J5FKKOU4

1 (At the sidebar)

2 MR. SCHACHT: My objection is I have no idea whether  
3 what you just said is true. Obviously, it happened  
4 instantaneously. I've never researched this point. I simply  
5 don't know whether it's true or not. I would just ask, also --

6 THE COURT: You have an objection to cover you?

7 MR. SCHACHT: If they ask any more questions, I would  
8 ask that you tell them to defer them to the end and give us a  
9 chance to research.

10 THE COURT: No, I'm not going to do that.

11 MR. SCHACHT: Okay.

12 THE COURT: You know from argument, that when the  
13 judge wants a question answered, he wants it answered now.

14 Mr. Bove, Ms. Houle, am I correct on the law?

15 MS. HOULE: Your Honor, I believe you've properly  
16 instructed the jury on the law.

17 THE COURT: I did okay?

18 MS. HOULE: Yes, your Honor.

19 THE COURT: Okay.

20 MS. HOULE: Thank you.

21 (Continued on next page)

J5FKKOU4

1 (In open court)

2 THE COURT: I encourage you to ask questions if you  
3 have any. This charge is not a formality; it's for you to  
4 understand and apply. One reason I don't give out -- there are  
5 a few, but one reason I don't give out a printed charge is that  
6 because nothing is ever a hundred percent complete. Someone  
7 asks a question, and it's important that the question be put to  
8 me. In this proper instance, I will ask the advice of counsel,  
9 but if it's answered within the jury room, we don't know what  
10 the story is. And it's important, also, that jurors are equal,  
11 and there's no experts within the jury. Nobody who is a Ph.D.  
12 in literature should be the one who interprets a judge's  
13 instructions to the rest. You're equal, and part of that  
14 equality is if you have a question that you need answered, you  
15 ask the question, and I will answer it.

16 The government does not have to prove that the  
17 defendant actually provided material support or resources to  
18 Hezbollah if it can prove beyond a reasonable doubt that he  
19 attempted to do so. If you prove an attempt, it's the same as  
20 proving a crime itself. But to prove attempt, the government  
21 must prove beyond a reasonable doubt that the defendant  
22 intended to commit the crime itself and willfully took some  
23 action that was a substantial step in an effort to bring about  
24 or accomplish the crime.

25 Mere intention to commit a specific crime does not

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1 amount to an attempt. Mere preparation to commit the crime  
2 does not constitute the crime. The defendant's action must  
3 constitute at least a substantial step toward the commission of  
4 the crime.

5 The acts of a person who intends to commit a crime  
6 will constitute an attempt where the acts themselves indicate  
7 an intent to willfully commit the crime, and the acts are a  
8 substantial step in a course of conduct planned to end in the  
9 commission of the crime. There is no requirement that an  
10 attempt be successful, actually -- if it's successful, you  
11 prove the crime -- or that the defendant actually carried out  
12 the crime he was trying to commit.

13 If you find beyond a reasonable doubt that the  
14 defendant attempted to commit the crime charged in Count One,  
15 then he is guilty.

16 With respect to Count Two -- that ends Count One --  
17 providing material assistance knowingly and intentionally.

18 JUROR: I'm sorry, one more thing.

19 THE COURT: Don't apologize.

20 JUROR: I didn't hear if you made a ruling on the  
21 objection about the question that I had asked previously. I  
22 assume you didn't say anything, so your --

23 THE COURT: It's not necessary for me to do so. If I  
24 don't correct myself, what I said stands.

25 JUROR: Then we assume what you said stands?

J5FKKOU4

1           THE COURT: Yes.

2           JUROR: Okay. Thank you.

3           THE COURT: Objections are rulings on issues of law  
4 and are not the jury's concern. They really have no relevance  
5 in what you're doing. I give you the instruction, I listen to  
6 what attorneys told me, and by not correcting it, it's the same  
7 instruction.

8           Now, moving on to Count Two: Conspiracy. Conspiracy  
9 to give material support to Hezbollah. You'll notice that  
10 Count One is the substantive crime; Count Two is the conspiracy  
11 to commit that substantive crime. Count Three, you'll hear, is  
12 a substantive crime. Count Four is the conspiracy to commit  
13 that crime.

14           Conspiracy, I'll tell you, is a separate crime from  
15 the object of the conspiracy, which itself may be a crime.

16           Count Two of the indictment charges that from at least  
17 in or about 2002 up to and including in or about  
18 September 2015, in the Southern District of New York, Lebanon,  
19 and elsewhere, Ali Kourani, the defendant, and others, known  
20 and unknown, knowingly did combine, conspire, confederate and  
21 agree together and with each other to provide material support  
22 or resources to Hezbollah.

23           Count Two further charges that it was a part and an  
24 object of the conspiracy that Ali Kourani, the defendant, and  
25 others, known and unknown, would and did agree to provide

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1 Hezbollah with material support and resources, including  
2 personnel, knowing that Hezbollah was a designated foreign  
3 terrorist organization, that Hezbollah engages and has engaged  
4 in terrorist activity, or that Hezbollah engages and has  
5 engaged in terrorism.

6 A conspiracy is a separate crime, separate from the  
7 substantive crime that is the object of the conspiracy. A  
8 conspiracy is a kind of criminal partnership, an agreement or  
9 understanding between two or more persons to join together to  
10 accomplish some unlawful purpose. A conspiracy does not need  
11 to include more than two people. It can include many, but it  
12 must include at least two.

13 With respect to Count Two, you may find the defendant  
14 guilty of the crime of conspiracy to provide material support  
15 or resources to Hezbollah even if the substantive crime,  
16 providing material support or resources to Hezbollah, was not  
17 actually committed or accomplished. That's because conspiracy  
18 is a separate crime.

19 You must find two elements beyond a reasonable doubt:  
20 First, that the charged conspiracy existed; in other words,  
21 that there was an unlawful agreement or understanding between  
22 two or more people to achieve an unlawful object or plan;

23 And second, that the defendant knowingly and  
24 intentionally joined the conspiracy with intent to further its  
25 illegal purpose; that is, that he knowingly and intentionally

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joined with at least one other person in the agreement in order to violate the law.

The object of a conspiracy is the illegal goal that the conspirators agree on or hope to achieve. The conspirators do not have to agree on the details of the conspiracy, so long as they agreed on the essential nature of their plan. Whether the conspirators are, in fact, successful in achieving that goal is not relevant. Here, the object of the conspiracy charged in Count Two was to provide material support or resources to Hezbollah. That's a separate crime. But for the conspiracy, the government must prove beyond a reasonable doubt that two or more persons made an agreement or came to an understanding to violate the law - here, the law against providing material support or resources to Hezbollah.

The government is not required to show that two or more people sat around the table and entered into a formal contract or that they orally announced their agreement. By its nature, a conspiracy is often characterized by secrecy. Express language or specific words are not required. It's sufficient if two or more persons, in any manner, whether they say so directly or not, come to a common understanding to violate the law.

In determining if there has been an unlawful agreement, you may judge the acts and conduct of the alleged members of the conspiracy. Proof that an object of a

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1 conspiracy was accomplished may be the most persuasive evidence  
2 of the existence of the conspiracy itself. In other words, the  
3 success of the venture, if you believe it was successful, is  
4 often the best proof of the unlawful agreement, but it's not a  
5 necessary condition that a conspiracy actually succeed in its  
6 purpose for you to conclude that the conspiracy existed.

7 Therefore, you must first determine if the government  
8 has established beyond a reasonable doubt the existence of the  
9 conspiracy charged in Count Two of the indictment. If, upon  
10 consideration of all the evidence, direct and circumstantial,  
11 you find beyond a reasonable doubt that two or more people  
12 agreed or came to an understanding to work together to further  
13 the unlawful scheme alleged in the indictment, proof of the  
14 existence of the conspiracy is established.

15 The second element of Count Two that the government  
16 must prove beyond a reasonable doubt is that the defendant  
17 knowingly and intentionally became a member of the conspiracy.  
18 That is, did the defendant participate in that conspiracy with  
19 knowledge of its unlawful purpose and with the specific  
20 intention of furthering its objectives?

21 I'm not going to repeat the definitions of knowingly  
22 and intentionally unless someone wants me to.

23 Knowledge is a matter of inference from facts proved.  
24 To have guilty knowledge, a defendant need not know the full  
25 extent of the conspiracy. Similarly, a defendant need not know

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1 all the activities of the conspiracy or even all the members of  
2 the conspiracy. A conspirator's liability is not measured by  
3 the extent or duration of his participation or whether he  
4 joined at the outset of the conspiracy or at some later time.  
5 Indeed, each member may perform separate and distinct acts and  
6 may perform them at different times. Some conspirators may  
7 play major roles, others minor roles. Sometimes, a single act  
8 may be enough to bring a defendant within the membership of a  
9 conspiracy, provided that the defendant was aware of the  
10 conspiracy and knowingly associated himself with its criminal  
11 aims. There must be knowing association; that is, one must be  
12 aware of the conspiracy and knowingly participated in it, with  
13 intent to bring about its illegal purpose. The government must  
14 prove all these things beyond a reasonable doubt.

15           Once someone knowingly and intentionally joins the  
16 conspiracy, that person remains a conspirator until either the  
17 conspiracy ends or the person leaves the conspiracy.

18           Mere association with one or more members of a  
19 conspiracy, or even helping another member of a conspiracy,  
20 does not automatically make the defendant a member. Mere  
21 knowledge or acquiescence without intentional and knowing  
22 participation in the unlawful plan is not sufficient. What is  
23 necessary is that a defendant aid or participate in a  
24 conspiracy with knowledge of at least one of its unlawful  
25 purposes and with the intention to help accomplish that

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1 purpose.

2 It is not necessary that the defendant receive or even  
3 anticipate any financial benefit from his participation, as  
4 long as he knowingly aided or participated in with the  
5 intention to help the conspirators achieve their unlawful  
6 purpose.

7 In sum, the government must prove beyond a reasonable  
8 doubt that the defendant knew of the conspiracy, that the  
9 defendant knew of the conspiracy's unlawful purpose, and that  
10 the defendant joined the conspiracy to further its unlawful  
11 objectives.

12 There is no requirement that the government prove any  
13 overt act with regard to this conspiracy. The government need  
14 only prove beyond a reasonable doubt that there was a  
15 conspiracy, and that the defendant knowingly and intentionally  
16 joined it.

17 So, going back to the verdict sheet, Count One deals  
18 with the substantive crime; Count Two deals with the  
19 conspiracy, the separate crime of conspiracy. For each, you're  
20 asked to check the appropriate box, guilty or not guilty. If  
21 you unanimously satisfy your separate consciences, come to a  
22 finding of guilty, the government proved all it had to prove  
23 beyond a reasonable doubt, you check the box guilty. If you  
24 unanimously come to the belief that the government failed to  
25 prove its case beyond a reasonable doubt, you check the box not

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1 guilty. In either event, your decision must be unanimous.

2 JUROR: Judge, a question?

3 THE COURT: Yes.

4 JUROR: In regard to conspiracy, if he is -- if the  
5 defendant is a member of Hezbollah, and has accepted missions,  
6 and carried out those missions, is that the conspiracy, or is  
7 it his actual acts in carrying out those missions that we have  
8 to look at as conspiracy?

9 THE COURT: The conspiracy is to provide material  
10 support to Hezbollah. The rest of it, I can't tell you because  
11 it's really your decisions.

12 JUROR: Thank you.

13 THE COURT: Count Three of the indictment charges that  
14 in or about 2011, in Lebanon and elsewhere, Ali Kourani, the  
15 defendant, knowingly received military-type training from and  
16 on behalf of Hezbollah, knowing that Hezbollah was a designated  
17 foreign terrorist organization, or that it engages and has  
18 engaged in terrorist activity, or that it engages or has  
19 engaged in terrorism.

20 The government must prove beyond a reasonable doubt,  
21 first, that the defendant received military-type training from  
22 Hezbollah;

23 Second, that he acted knowingly and intentionally;

24 And third, that one of the jurisdictional requirements  
25 of the statute is satisfied.

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1                   So the first element is that the defendant received  
2 military-type training from Hezbollah.

3                   Military-type training includes training in means or  
4 methods that can cause death or serious bodily injury, or  
5 destroy or damage property, or disrupt services to critical  
6 infrastructure, or training in the use, storage, production, or  
7 assembly of any explosive, firearm, or other weapon, including  
8 any weapon of mass destruction. The defendant received  
9 military-type training if he was provided, given, or otherwise  
10 obtained such training from Hezbollah.

11                  The term "bodily injury" means any cut, abrasion,  
12 bruise, burn, or disfigurement, physical pain, illness,  
13 impairment of the function of a bodily member, organ, or mental  
14 faculty, or any other injury to the body, no matter how  
15 temporary. The term "serious bodily injury" means a bodily  
16 injury that involves one or more of the following features: A  
17 substantial risk of death, extreme physical pain, protracted  
18 and obvious disfigurement, or protracted loss or impairment of  
19 the functions of a bodily member, organ, or mental faculty.

20                  Critical infrastructure means systems and assets vital  
21 to national defense, national security, economic security,  
22 public health or safety, including both regional and national  
23 infrastructure. Critical infrastructure may be publicly or  
24 privately owned. Examples of critical infrastructure include  
25 gas and oil production, storage, or delivery systems, water

J5FKKOU4

1 supply systems, telecommunications networks, electrical power  
2 generation or delivery systems, financing and banking systems,  
3 emergency services, including medical, police, fire, rescue  
4 services, 911, and transportation systems and services,  
5 including highways, mass transit, airlines and airports.

6 A weapon of mass destruction includes any explosive or  
7 incendiary bomb grenade or rocket having a propellant charge of  
8 more than four ounces and any combination of parts either  
9 designated or intended for use in converting a device into a  
10 weapon of mass destruction. The term "weapon of mass  
11 destruction" does not include any device which is neither  
12 designed, nor redesigned for use as a weapon.

13 The second element of Count Three that the government  
14 must prove beyond a reasonable doubt is that the defendant  
15 acted knowingly and intentionally, and with one or more of the  
16 following three types of knowledge: (a) knowledge that  
17 Hezbollah had been designated by the Secretary of State as a  
18 terrorist organization;

19 Or (b) knowledge that Hezbollah engaged in or engages  
20 in terrorist activity;

21 Or (c) knowledge that Hezbollah engaged in or engages  
22 in terrorism.

23 I have instructed you on all these terms, and unless  
24 you want me to, I won't do it again.

25 And then the third or jurisdictional element the

J5FKKOU4

1 government must prove beyond a reasonable doubt, that at least  
2 one of the following criteria is satisfied: The offense  
3 occurred, in whole or in part, within the United States;

4 The offense occurred in or affected interstate or  
5 foreign commerce;

6 Or (c) the defendant is a national of the United  
7 States.

8 I have already defined all these terms.

9 And there's a box for Count Three, like the other  
10 boxes, on the verdict form.

11 Now we're on Count Four. This count charges that in  
12 or about 2011, in Lebanon and elsewhere, Ali Kourani, the  
13 defendant, and others, known and unknown, knowingly did  
14 combine, conspire, confederate, and agree together and with  
15 each other to receive military-type training from and on behalf  
16 of Hezbollah. This is the conspiracy to the substantive count.  
17 Count Three, the substantive count, receiving military-type  
18 training; Count Four is conspiracy.

19 Count Four further charges that it was a part and an  
20 object of the conspiracy that Ali Kourani, the defendant, and  
21 others, known and unknown, would and did receive military-type  
22 training from and on behalf of Hezbollah, knowing that  
23 Hezbollah was a designated foreign terrorist organization or  
24 that it engages and has engaged in terrorist activity, or that  
25 it engages and has engaged in terrorism.

J5FKKOU4

1           That finishes -- here are the elements of Count Four,  
2 very much like the elements of Count Two.

3           The government must prove beyond a reasonable doubt  
4 that each of the elements for a conspiracy charge have been  
5 met. That there was a conspiracy that the defendant knowingly  
6 joined.

7           Count Four, the alleged object is different, it's to  
8 receive military-type training from Hezbollah, which is a crime  
9 that has the elements that I described to you in connection  
10 with Count Three.

11           Now, before Count Four, there's one additional  
12 requirement, and that is the requirement of an overt act.  
13 Remember, I told you in Count Two, that conspiracy account of  
14 providing material support, does not have any overt act  
15 requirement. Count Four does.

16           (Continued on next page)

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J5FAAKOU5

## Jury Charge

1                 THE COURT: The government must prove beyond a  
2 reasonable doubt that one of the members of the conspiracy,  
3 anyone, knowingly committed at least one overt act in  
4 furtherance of the conspiracy. The requirement of an overt act  
5 is a requirement that some step or action to further the  
6 conspiracy was taken during the life of the conspiracy by one  
7 of the conspirators. In order for the government to satisfy  
8 its burden of proof the government doesn't have to prove that  
9 the defendant himself committed any overt act, as long as it  
10 proves beyond a reasonable doubt that either the defendant or  
11 one of its alleged co-conspirators knowingly committed an overt  
12 act in furtherance of the conspiracy.

13                 An innocent lawful act standing alone can constitute  
14 an overt act. But the apparently innocent act sheds its  
15 harmless character if it's a step in carrying out, promoting  
16 aiding or assisting the conspiratorial scheme to violate the  
17 law. Therefore an overt act does not have to be an act that is  
18 in and of itself criminal.

19                 Similarly, an overt act would constitute the objective  
20 of the conspiracy but it does have to be committed by a  
21 conspirator and it does have to be in furtherance of the  
22 conspiracy.

23                 That carries us through Count Four and now we're up to  
24 Count Five.

25                 Count Five of the indictment charges that from at

J5FAAKOU5

## Jury Charge

1 least in or about 2002 up to and including in or about  
2 September 2015 in the Southern District of New York, Lebanon  
3 and elsewhere, Ali Kourani, the defendant, and others known and  
4 unknown knowingly did combine, conspire, confederate and agree  
5 together and with each other to violate the federal firearms  
6 laws. So this is another conspiracy to violate the firearms  
7 laws.

8 Count Five further charges that it was a part and an  
9 object of the conspiracy that Kourani, the defendant, and  
10 others known and unknown during and in relation to a crime of  
11 violence which Kourani may be prosecuted in a court of the  
12 United States would and did use and carry a machine gun and  
13 other destructive devices.

14 In the Counts One, Two, Three and Four are considered  
15 crimes of violence providing material support to an enemy or  
16 conspiring to do so, obtaining military training certain  
17 agencies or conspiring to do so. They're all considered  
18 violating offenses. So, this is conspiracy to commit a  
19 conspiracy to further the purpose of violating federal firearms  
20 laws.

21 The government must prove beyond a reasonable doubt  
22 that two elements for a conspiracy charged has been met. And  
23 those are the two elements I charged you in Count Two. The  
24 principle difference between Count Two and Count Five different  
25 object of the conspiracy. For Count Five the alleged object to

J5FAAKOU5

## Jury Charge

use or carry a firearm during and in relation to the crimes of violence charged in Counts One, Two, Three and Four would be to possess a firearm in furtherance of crimes charged in Counts One, two, Three and Four. So, either to use or carry a firearm during and in relation to the crimes of violence charged in One, Two, Three and Four or to possess a firearm.

The conspiracy charged in Count Five requires proof of two propositions. The first that the defendant committed a crime of violence that could be charged in federal court. That criteria satisfies as a matter of law. If you find the defendant guilty of either or all Counts One, Two, Three or Four.

Second, that the defendant or a co-conspirator knowingly used or carried a firearm during and in relation to the crimes of violence charged in Counts One, Two, Three and Four or possessed a firearm in furtherance of those crimes.

Using a firearm requires an act of employment of a firearm during and in relation to the commission of a crime. It does not mean that a defendant or a co-conspirator must actually fire or attempt to fire the firearm. Although, it obviously constitutes use.

Brandishing a firearm, displaying it or referring to the firearm so that others present know that the firearm is available if needed, all constitute use of a firearm.

The mere possession a firearm at or near the site of a

J5FAAKOU5

## Jury Charge

1       crime without active employment as I just described is not  
2       however sufficient to constitute use of a machine gun or  
3       destructive device.

4              Carrying.

5              That means to have a firearm within one's control so  
6       that the firearm is available in such a way that it furthers  
7       the commission of a crime of violence. The defendant or a  
8       co-conspirator may not available a firearm physically. That  
9       is, have had actual possession of a firearm on his person. If  
10      you find that a defendant or a co-conspirator had dominion and  
11      control over the place where a firearm is located, had the  
12      power an intention to exercise control over that firearm, that  
13      the firearm was immediately available in such a way that it  
14      furthered the commission of one of the crimes of violence  
15      charged in Counts One, Two, Three or Four, then that individual  
16      carried the firearm.

17             To possess a firearm can be proved in one of two ways.  
18       Actual possession, that is having physical custody or control  
19       of an object or showing that the person had the ability to  
20       exercise substantial control over an object, even if he did not  
21       have the object in his physical custody at a given time. And  
22       the person have the intent to exercise control would satisfy  
23       the definition of possessed.

24             MS. HOULE: Your Honor, may we have a brief side bar?

25             THE COURT: Yes.

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## Jury Charge

1 (Continued on next page)

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J5FAAKOU5

## Jury Charge

1 (side bar)

2 THE COURT: Yes, Ms. Houle.

3 MS. HOULE: Apologies, your Honor. We are about  
4 halfway through the charge. So, we are wondering if this is a  
5 good time to take a brief break.

6 THE COURT: I'm glad you said this because I was  
7 finding a little dizziness in me as well. I don't want to  
8 excuse the jury from the room though.

9 MS. HOULE: Thank you.

10 THE COURT: Good timing.

11 (Continued on next page)

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J5FAAKOU5

## Jury Charge

1 (In Open Court)

2 THE COURT: Sometimes after a tired day I like to sit  
3 down in a nice chair and read and then what happens, within two  
4 or three minutes is that the book drops to the floor. So,  
5 sometimes when I'm reading these extensive charges too I get  
6 the feeling of, what did I just say? A break is important.  
7 But Ms. Houle made a very timely objection so that I could have  
8 that break.

9 Control over an object may be demonstrated by the  
10 existence of a working relationship between one person having  
11 the power or ability to control the item and another person who  
12 has actual physical custody. The person having control  
13 possesses the firearm because he has an affective working  
14 relationship with the person who has actual physical custody of  
15 the firearm and because he can direct the movement or transfer  
16 a disposition of the firearm.

17 In addition, an individual may have possession of an  
18 item that is not found on his person because that individual  
19 has a relationship to the location where the item is  
20 maintained.

21 In this matter, for example, a business person may  
22 legally posses things that are scattered throughout a number of  
23 stores or offices or installations throughout the country.  
24 More than one person can have control over the same firearm.  
25 The law recognizes that possession may be sole or joint. If

J5FAAKOU5

## Jury Charge

1 one person alone is actual or constructive, possession of a  
2 thing possession is sole. If more than one person has  
3 possession of it, then possession is joint.

4 Possession of a firearm in furtherance of a crime of  
5 violence requires that an individual possessed a firearm and  
6 that the possession advanced or moved the crime forward.

7 The mere presence of a firearm is not enough.  
8 Possession in furtherance requires that the possession be  
9 incident to an essential part of the crime. The possession  
10 must have played some part in furthering a crime of violence in  
11 order for this element to be satisfied.

12 As with Count Two, it is not necessary for the  
13 government to prove that any overt act related to Count Five  
14 took place. As long as the government proves the existence of  
15 the conspiracy charged in Count Five and that the defendant is  
16 a knowing and intentional member of the conspiracy. Only Count  
17 Four requires overt act.

18 Now with Count Five, if you find the defendant guilty  
19 you have to go on and answer to special interrogatories which  
20 are set out in the verdict form. These require you to find if  
21 the offense involves a machine gun or a destructive device.

22 Question six asks if Count Five involves a machine  
23 gun.

24 Question seven asks if it involves a destructive  
25 device.

J5FAAKOU5

## Jury Charge

1           A machine gun is any weapon that shoots or is designed  
2 to shoot or can readily be restored to shoot automatically more  
3 than one shot without manual reloading by a single press of the  
4 trigger.

5           Destructive device includes any explosive or  
6 incendiary bomb grenade or rocket having a propellant charge of  
7 more than four ounces and any combination of parts either  
8 designed or intended for use and converting the device into a  
9 weapon of mass destruction.

10           The term "destructive device" does not include any  
11 device which is neither designed nor redesigned or used as a  
12 weapon.

13           We're now up to Count Six.

14           JUROR NO. TWO: Your Honor, can I ask a question on  
15 Count Five?

16           THE COURT: Yes.

17           JUROR NO. TWO: So far I think that was maybe more  
18 complicated in my mind than the others. If we were to have  
19 found the defendant guilty on Count Three military training, so  
20 that the defendant in that example would be working with other  
21 people using firearms as part of the military training.

22           THE COURT: All right.

23           JUROR NO. TWO: Under that circumstance would that  
24 imply that the defendant was also guilty of Count Five or --

25           THE COURT: No. You have to find especially for Count

J5FAAKOU5

## Jury Charge

1 Five. You could have military training on the use of all kinds  
2 of weapons but Count Five focuses on machine guns or  
3 destructive devices.

4 THE JUROR: OK. Let me he re-clarify. If in Count  
5 Three the military training included those types of weapons,  
6 then is it necessarily a conspiracy because there are multiple  
7 people working together? I just want to make sure I  
8 understand.

9 THE COURT: Let me see if I can clarify this.

10 It's common in indictments to allege -- let me  
11 withdraw that.

12 The crime is defined by the existence of certain  
13 facts, a state of mind. Those facts or some of those facts can  
14 be a basis of a different crime. So, there is some overlap or  
15 there can be some overlap.

16 You should ask yourself for each of the counts, did  
17 the government prove beyond a reasonable doubt the elements  
18 pertaining to that count? So, your inquiry is separate, make a  
19 separate inquiry with respect to Count Three and separate  
20 inquiry with respect to Count Five.

21 I don't want to answer it any more specifically than  
22 that because I think I'd be telling you how to find and I don't  
23 want to do that.

24 I don't have an opinion on that.

25 THE JUROR: Thank you.

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## Jury Charge

1                   THE COURT: Any objection?

2                   MR. SCHACHT: Yes, your Honor. Thank you.

3                   THE COURT: Do you want to come up or just rest on  
4 objection?

5                   MR. SCHACHT: I'll rest on the objection.

6                   THE COURT: All right. We're up to Count Six.

7                   Count Six charges that from at least in or about 2002  
8 to and including in or about September 2015 in the Southern  
9 District of New York, Lebanon and elsewhere, Ali Kourani, the  
10 defendant, willfully attempted to and did make and receive a  
11 contribution of funds, goods and services to and for the  
12 benefit of as well as from Hezbollah.

13                  The government must prove beyond a reasonable doubt --  
14 I left something out when reading the charge.

15                  The defendant willfully attempted to and did make or  
16 receive a contribution of funds, goods and services to and for  
17 the benefit of, as well as from Hezbollah in violation of  
18 government regulations.

19                  In order to sustain this burden of proof, with respect  
20 to Count Six, the government must prove beyond a reasonable  
21 doubt:

22                  First, that the defendant violated an executive order  
23 or regulations issued pursuant to IEEPA.

24                  Second, the defendant committed a violation or  
25 violations willfully.

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## Jury Charge

1           Third, that the defendant did not have a license  
2 issued by the office of foreign assets control to engage in the  
3 conduct that violated the executive order or regulations.

4           Fourth, that there is some nexus or connection between  
5 the prohibited conduct and the United States.

6           Let me break these down.

7           In January 1995, executive order 12947 was issued  
8 pursuant to IEEPA and other statutes. An executive order is an  
9 order issued by the president or his office. Generally, an  
10 limitation or statute. Statutes is law passed by Congress  
11 meaning both in the house and senate and approved by the  
12 president. But under various laws you can have executive  
13 orders. And we have this execute I order 12947 applicable to  
14 our case.

15           This executive order provides that all United States  
16 persons anywhere in the world are prohibited from dealing with  
17 or engaging in any transaction with Hezbollah. The executive  
18 order also prohibits anyone located within the United States  
19 whether a U.S. person or not from dealing with or engaging in  
20 any transaction with Hezbollah while that person is located  
21 within the United States.

22           The executive order also prohibits both U.S person  
23 located anywhere in the world and anyone at all located within  
24 the United States from engaging in a transaction that evades or  
25 avoids or attempts to evade or avoid the requirements of the

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## Jury Charge

1 executive order. And the executive order authorizes the United  
2 States Department of Treasury to promulgate regulations  
3 prohibiting persons from engaging in any transactions with  
4 Hezbollah.

5 A part of the Treasury Department known as the Office  
6 of Foreign Assets Control or "OFAC", subsequently issued  
7 regulations pursuant to IEEPA and executive order 12947. In  
8 the regulations OFAC issued a series of prohibitions related to  
9 Hezbollah.

10 First, OFAC prohibited U.S. persons anywhere from  
11 receiving or providing funds, goods or any type of services to  
12 Hezbollah.

13 Second, OFAC prohibited attempts to violate its  
14 regulations relating to Hezbollah, conspiracy to violate OFACs  
15 regulations relating to Hezbollah and any transaction that has  
16 the purpose or effect of evading or facilitating evasion of  
17 OFACs regulations related to Hezbollah.

18 The question is, did the defendant violate the  
19 executive order, which prohibits persons from contributing  
20 anything to Hezbollah?

21 The second element that the government must prove  
22 beyond a reasonable doubt is that the defendant willfully  
23 violated executive order of regulations. An act is willful if  
24 it's voluntary and intentional. If it's done knowingly and  
25 purposeful with the intent to do something that the law

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## Jury Charge

1 forbids.

2 That is, the defendant's actions must have been the  
3 product of his conscious objective rather than the product of a  
4 mistakes, accident, mere negligence or some other innocent  
5 reason.

6 The defendant must have acted with knowledge that his  
7 conduct was unlawful and with a bad purpose to either disobey  
8 or disregard the law.

9 Third, element the government must prove beyond a  
10 reasonable doubt is that defendant did not obtain authorization  
11 from OFAC to engage in transaction with Hezbollah or to provide  
12 goods for services to Hezbollah.

13 The parties have stipulated that this element is  
14 proved.

15 Fourth element of Count Six that the government must  
16 prove beyond a reasonable doubt that there is some nexus or  
17 connection between the United States and transactions, goods or  
18 services at issue. This element may be satisfied if the  
19 transactions, goods or services were provided by the defendant  
20 in part in the United States or if the defendant was a United  
21 States citizen at the time they were provided to Hezbollah.

22 The defendant is also charged in Count Six with  
23 attempting to violate an executive order and regulations, the  
24 same executive order and regulations. By making and receiving  
25 and attempting to make and receive contributions of funds,

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## Jury Charge

1 goods and services to Hezbollah.

2 We have gone over the law before and I don't propose  
3 is do it again unless somebody wants me to. We're done with  
4 Count Six.

5 The question for Count Six, how do you find the  
6 defendant, guilty or not guilty?

7 Count Seven charges that from at least in or about  
8 2002, up to and including about September of 2015 in the  
9 Southern District of New York, Lebanon and elsewhere, Ali  
10 Kourani, the defendant, knowingly and willfully along with  
11 others known and unknown, did combine, conspire, confederate  
12 and agree together and with each other to make and receive a  
13 contribution of funds goods and services to and for the benefit  
14 of, as well as from Hezbollah.

15 Can I see counsel please.

16 (Continued on next page)

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## Jury Charge

1 (side bar)

2 THE COURT: How is Count Seven different from Count  
3 Two?

4 MR. SCHACHT: Count Two?

5 MS. HOULE: The object of the conspiracy is simply as  
6 to Count Seven that the object of the conspiracy in Count Two  
7 is to provide material support and resources and for Count  
8 Seven it's to violate the executive order regulations that your  
9 Honor just described.

10 THE COURT: How do you attempt a conspiracy -- OK.

11 Sorry.

12 (Continued on next page)

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## Jury Charge

1 (In Open Court)

2 THE COURT: Count Seven of the indictment is that from  
3 in at least to in or about 2002, up to and including September  
4 of 2015 in the Southern District of New York, Lebanon and  
5 elsewhere -- I'm repeating -- Ali Kourani, the defendant,  
6 knowingly and willfully along with others known and unknown,  
7 did combine, conspire confederate and agree together and with  
8 each other to make and receive a contribution of funds, goods  
9 and services to and for the benefit of, as well as from  
10 Hezbollah in violation of the executive order.

11 So, like the other pairs, the indictment alleges the  
12 substantive count in Six and the conspiracy in Seven.

13 To satisfy its burden of proof with respect to Seven  
14 the government must prove beyond a reasonable doubt each of the  
15 two elements for conspiracy charged -- namely, that the  
16 conspiracy existed and that the defendant knowingly and  
17 intentionally joined it.

18 And these have been covered by instructions earlier  
19 and I propose not to do it again.

20 There's a different object of this conspiracy. It's  
21 to make and receive and attempt to make and receive  
22 contributions of funds, goods and services in Hezbollah in  
23 violation of the executive order.

24 With respect to Count Seven, the government does not  
25 have to prove any overt acts.

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## Jury Charge

1           Count Eight charges that in or about 2009 Ali Kourani,  
2 the defendant, in the Southern District of New York and  
3 elsewhere knowingly procured contrary to law and naturalization  
4 of any person to facilitate an act of international terrorists.  
5 The government must prove beyond a reasonable doubt four  
6 elements.

7           First, that the defendant provided false information  
8 in a naturalization proceeding.

9           Two, the false information provided by the defendant  
10 related to a material matter that is an important or  
11 significant matter.

12           Third, the defendant acted knowingly.

13           Fourth, the defendant procured naturalization as a  
14 result of a false information.

15           A naturalization proceeding includes written  
16 applications submitted to the government in connection with the  
17 effort to obtain naturalization. A statement is false if it  
18 was not true at the time that it was made or written.

19           I said that the false information has to be material  
20 to prove materiality. The government must prove that the  
21 defendant's misrepresentation had a natural tendency to  
22 influence the government's decision and that truthful  
23 information would have disclosed facts relevant to the  
24 defendant's qualifications for citizenship to cause a denial of  
25 citizen shipment.

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## Jury Charge

1           To act knowingly we've covered already and I don't  
2 propose that we do that.

3           The fourth element that the government must prove  
4 beyond a reasonable doubt that the defendant procured  
5 naturalization as result of providing false information. The  
6 government must prove that the defendant actually obtained  
7 United States citizenship as a result of material  
8 misrepresentations. This means that the government must prove  
9 that if the defendant had provided immigration authorities with  
10 the truthful information it would have raised a fair inference  
11 that the defendant was not eligible for naturalization.

12           If you find that count, that's Count Eight, you check  
13 the box and there is a special interrogatory with respect to  
14 Count Eight.

15           If you find, and only if you find the defendant guilty  
16 of committing Count Eight you, have to determine if beyond a  
17 reasonable doubt the defendant committed this offense in order  
18 to facilitate the commission of an act of international  
19 terrorism. And that's, the special interrogatory is question  
20 11.

21           Was Count Eight committed to facilitate an act of  
22 international terrorism?

23           The term "act of international terrorism" includes  
24 providing material support or resources to Hezbollah as charged  
25 in Count One of the indictment. A conspire and to do so is

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## Jury Charge

1 charged in Count Two of the indictment. If you have found that  
2 the defendant government proved beyond a reasonable doubt that  
3 the defendant is guilty of either or both Count One and Count  
4 Two and that the defendant committed the crime charged in Count  
5 Eight as procuring naturalization, in order to facilitate the  
6 crimes charged in either or both One and Two, you should answer  
7 yes to the special interrogatory.

8 If you have found that the government failed to prove  
9 beyond a reasonable doubt that the defendant committed the  
10 crime charged in Count Eight, in order to facilitate either/or  
11 both Count One or Count Two, you should answer "no".

12 Is that clear?

13 OK. We have finished with the eight counts. I will  
14 now proceed to the rest of the instructions.

15 You should regard each count separately. Ask  
16 yourselves on each particular count did the government prove  
17 the elements pertaining to the count, each of them beyond a  
18 reasonable doubt? Do it count-by-count independently for each  
19 count. The government can prove none, one, some or all eight  
20 of the counts.

21 There's a requirement of venue also having to do with  
22 the ability and competence and authority of a Court to act and  
23 here a case involving a particular defendant.

24 With respect to Counts One through Seven, but not  
25 Count Eight, Congress has determined that acts begun or

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## Jury Charge

1 committed outside of the territorial jurisdiction of the United  
2 States are chargeable under the statutes pertaining to Counts  
3 One through Seven. So, we all with respect to the Counts One  
4 through Seven the crimes can be proved whether or not any  
5 particular act occurred in the Southern District of New York.

6 It is enough if you find that the location where the  
7 defendant was first arrested in the United States was in the  
8 Southern District of New York which includes Manhattan and the  
9 Bronx. So, if he was arrested here. That's enough.

10 Venue is also appropriate and is required for Count  
11 Eight that the defendant caused by act in furtherance of  
12 charged crime to occur within the Southern District of New  
13 York. The government need not prove that the crime itself was  
14 committed in this district or that the defendant himself was  
15 present here. It's sufficient to satisfy this element if any  
16 act in furtherance of a crime occurred within this district.

17 On this issue of venue and this issue alone, the  
18 government may prove venue by a preponderance of the evidence.  
19 That means the government must prove that is more likely than  
20 not that venue is established.

21 The beyond a reasonable doubt standard is not required  
22 a venue. It is a part of every other element of every other  
23 count.

24 The indictment makes reference to various dates. It  
25 does not matter if the specific act alleged occurred on or

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## Jury Charge

1 about a particular date alleged in the indictment.

2 All that matters is there is a substantial similarity  
3 between the dates charged in the indictment and the dates  
4 established by the evidence.

5 It is sufficient if you find that the crimes charged  
6 existed for some of the time within the period set forth in the  
7 indictment, if not for all the indictment.

8 You've seen on some of the exhibits that there were  
9 translations from Arabic to English. It's English translation,  
10 that's the evidence. The parties have agreed that the  
11 translations are accurate.

12 now I am going to talk to you about various forms of  
13 evidence. There are generally two kinds of evidence, direct  
14 evidence and circumstantial evidence. You may rely upon either  
15 in reaching your decision. Evidence is direct when exhibits  
16 that are admitted into evidence show facts or when the  
17 testimony is sworn to by witnesses who have actual knowledge of  
18 them from something they derived from the exercise of their  
19 senses, such as something they heard, something they saw,  
20 something they smelled, something they touched and so on.

21 Circumstantial evidence is evidence that tends to  
22 prove a disputed act by proof of other facts. You infer on the  
23 basis of reason and experience and common sense from an  
24 established fact the existence or the nonexistent of some other  
25 fact.

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## Jury Charge

1           Circumstantial evidence is of no less value than  
2 direct evidence. As a general rule, the law makes no  
3 distinction between direct and circumstantial evidence. But  
4 simply requires that before convicting any defendant, a jury  
5 must be satisfied that his or her guilt was proved beyond a  
6 reasonable doubt from all the evidence in the case.

7           Direct and circumstantial evidence each have their  
8 respective strengths and weaknesses. That's why the law  
9 requires you to look at evidence as a whole. Direct and  
10 circumstantial includes whether upon all the evidence the  
11 government has proved its case beyond a reasonable doubt.

12           We've talked about inferences. Inferences are made  
13 from one fact to another on the basis of reason, experience and  
14 common sense. An inference is not a suspicion or a guess. it's  
15 a reasoned logical decision to include that a disputed fact  
16 exists on the basis of another fact that you know exists.  
17 There are times when different inferences may be drawn from  
18 facts whether proved by direct or circumstantial evidence. The  
19 government may ask you to draw one set of inferences or the  
20 defense may ask you to draw another. It is for you and you  
21 alone to decide what inferences you will draw.

22           An inference is a deduction or conclusion that you,  
23 the jury, are permitted but not required to draw from the facts  
24 that have been established by the direct or circumstantial  
25 evidence.

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## Jury Charge

1           So, while you are considering the evidence presented  
2 you are permitted to draw from the facts that you find to be  
3 proved such reasonable inferences as will be justify in light  
4 of your common sense and experience.

5           Here again, let me remind you that whether based upon  
6 direct or circumstantial evidence or upon the logical  
7 reasonable inferences drawn from such evidence, you must be  
8 satisfied of the guilt of the defendant beyond a reasonable  
9 doubt.

10          This next section has to do with the credibility of  
11 witnesses, how you evaluate, to what extent you consider a  
12 witness credible or not. There's no magic formula for  
13 evaluating credibility. You bring to this courtroom all the  
14 experience and background of your lives and your everyday  
15 affairs. You determine for yourself everyday and in a  
16 multitude of circumstances the reliability of statements that  
17 are made now by others. The same tests that you use in your  
18 everyday matters of importance are the tests you use in your  
19 deliberations.

20          Your decision whether or not to believe a witness may  
21 depend on how this witness impressed you. Was the witness  
22 candid, frank and forthright? Did the witness seem as if he or  
23 she was hiding something, being evasive or suspect in some way?  
24 How did the way in which the witness testified on  
25 direct-examination compare with the way in which the witness

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## Jury Charge

1 testified on cross-examination? Was the witness's testimony  
2 consistent or contradictory? Did the witness appear to know  
3 what the witness was talking about and did the witness strike  
4 you as someone who was trying to report the knowledge that that  
5 witness had accurately?

6 In evaluating credibility you may consider if the  
7 witness testified inconsistently with something said at some  
8 earlier time. If a person says one thing at one time and  
9 another thing at another time, you may consider such  
10 inconsistency as indicating a lack of credibility. But as you  
11 know, that's not always the case. Sometimes people remember  
12 important things consistently and unimportant things  
13 inconsistently.

14 You should consider if the inconsistency is important  
15 or unimportant. It's up you to use your common sense to decide  
16 if the witness's testimony is credible or not. How much you  
17 choose to believe a witness may be influenced by the witness's  
18 bias. Does the witness have a relationship with the government  
19 may affect how or she testifies. Does the witness have an  
20 interest in the outcome of the case or some incentive or  
21 loyalty or motive that might cause the witness to shade the  
22 truth? Or does the witness have some bias, prejudice or  
23 hostility that may have caused witness consciously or not to  
24 give you something other than a complete accurate account of  
25 the facts that witness testified about? You may consider such

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## Jury Charge

1 questions in deciding what weight you will give to a witness's  
2 testimony. If a witness has an interest in the outcome that  
3 witness is not necessarily capable of giving truthful  
4 testimony.

5 It is for you to decide to what extent, if at all, the  
6 witness's interest has affected or colored the testimony a  
7 witness gives.

8 The evidence of one witness's bias or prejudice or  
9 hostility with respect to someone else requires you view to  
10 witness's testimony with caution, to weigh the evidence with  
11 care and to subject it to careful consideration.

12 If you find that witness willfully testified falsely  
13 as to a material fact, you have the right to reject the  
14 testimony of that witness in its entirety. Alternatively, even  
15 if you find that a witness has testified falsely or  
16 inaccurately about one matter you may reject as false or  
17 inaccurate that portion of the witness's testimony and accept  
18 as true any other portion of the testimony that recommends  
19 itself to your belief or which you may find corroborated by  
20 other evidence in the case.

21 In essence, what you try to do in deciding credibility  
22 is to size a person up in light of his demeanor, the  
23 explanations given and all the evidence in the case, just as  
24 you would in any important matter where you are trying to  
25 decide if a person is truthful, straightforward and accurate in

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## Jury Charge

1 that person's recollection.

2 You are not required to accept the testimony of a  
3 witness that is not contradicted or to credit a witness who was  
4 not impeached. You may decide not to credit the testimony of a  
5 witness based simply on your evaluation of that witness and the  
6 testimony given by the witness. In deciding the question of  
7 credibility, use your common sense, your good judgment and your  
8 experience.

9 You have heard evidence that witnesses discussed the  
10 facts of the case with lawyers before the witnesses appeared in  
11 court. There's nothing unusual or improper about such a  
12 meeting or meetings. It's common to do that. The witness may  
13 not be made aware of the subjects of which that witness would  
14 be questioned, focused on those subjects and have the  
15 opportunity to review relevant exhibits before being questioned  
16 about them. Such consultations help conserve your time and the  
17 Court's time. In fact, it would be unusual for a lawyer call  
18 to a witness without consulting that witness in advance.  
19 However, you may consider the consultations and meeting between  
20 counsel and the witness in evaluating a witness's credibility.

21 The testimony of a law enforcement officer should be  
22 considered by you just as any other evidence in the case. In  
23 evaluating the officer's credibility, use the same guidelines  
24 as you apply to the testimony of all other witnesses.

25 The fact that a witness may be employed by the federal

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## Jury Charge

1 government or by a state or city government as a law  
2 enforcement official does not mean that that witness's  
3 testimony is deserving of more or less consideration or carries  
4 greater or lesser weight than the weight that you give to other  
5 witnesses.

6 But it's legitimate for defense counsel to attack the  
7 credibility of a law enforcement witness or a government  
8 official on the ground that his or her testimony may be  
9 influenced by personal or professional interests in the outcome  
10 of the case. Again, you decide, you evaluate the testimony and  
11 give the testimony whatever weight you think it deserves.

12 You've heard evidence in the form of stipulations. A  
13 stipulation is an agreement between the parties that certain  
14 facts are true or that a witness if called would have given  
15 certain testimony or that a document would have stated certain  
16 things. You must accept the facts stipulated as true and that  
17 the witness if called would have given the testimony of the  
18 document stated that what the parties stipulated but you still  
19 determine the weight to be given it that information.

20 There were charts and summaries that were shown and  
21 which were marked as evidence in the case. Those charts and  
22 summaries are not better than the testimony or the documents  
23 upon which they're based. They are not themselves independent  
24 evidence. Therefore, you are to give no greater consideration  
25 to the charts or summaries than you give to the underlying

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## Jury Charge

1 evidence.

2 It is for you to decide if the charts correctly  
3 present the information in the underlying evidence. You are  
4 entitled to consider the charts, schedules and summaries if you  
5 find that they are of assistance to you in analyzing the  
6 evidence and understanding the evidence.

7 You heard testimony from expert witnesses. An expert  
8 is allowed to express his or her opinion on matters about which  
9 he or she has specialized knowledge or training. Expert  
10 testimony is presented to you on the theory that someone who is  
11 experienced in the field can assist you in understanding the  
12 evidence or in reaching an independent decision on the facts.

13 In weighing the expert's testimony you consider the  
14 expert's qualifications, his or her opinions, his or her  
15 reasons for testifying, as well as all of the other  
16 considerations that ordinarily apply when you are deciding  
17 whether to believe a witness's testimony.

18 You may give expert testimony whatever weight, if any,  
19 you find it deserves in light of all the evidence in the case.  
20 You should not accept a witness's testimony simply because the  
21 witness is an expert. Nor should you substitute such testimony  
22 for your own reason, judgment and common sense. You are the  
23 determiners of facts, not the experts. The experts could help  
24 you but it's your decision to make.

25 Among the exhibits you received you've seen some that

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## Jury Charge

1 have been redacted or covered over or blacken. You are to  
2 concern yourself only with the part of the item that is  
3 admitted into evidence and not speculate in any way of what was  
4 in the part that was redacted.

5 There are several person's whose name you heard during  
6 the trial who did not appear at trial and testify. The  
7 government is not required to call each and everyone it  
8 interviewed. You should not draw any inference as to what any  
9 absent person would have testified to had they been called.  
10 The question you have to decide is whether the evidence in the  
11 trial proves beyond a reasonable doubt the crimes charged  
12 against the defendant, Ali Kourani.

13 We don't have much more members of the jury. Please  
14 try or if you need a little bit of a break we can do that too  
15 but there's not too much more.

16 Some of the people who may have been involved in the  
17 events leading to this trial are not on trial and may not have  
18 been witnesses. You should not speculate about such people.  
19 Nor should you draw any inference, favorable or unfavorable  
20 toward the government or the defendant because of that. Those  
21 matters are not your concern and should have no bearing upon  
22 your verdict as to the defendant's guilt.

23 The government has various investigative techniques  
24 that it uses.

25 What techniques the government uses is not your

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## Jury Charge

1 concern. Your concern is the evidence before you whether it  
2 proves beyond a reasonable doubt each and all the crimes  
3 charged in each and all the elements of each crime charged.  
4 There is no legal requirement that law enforcement officials  
5 use any specific investigative techniques.

6 You have heard testimony about evidence seized in  
7 various searches including testimony that when law enforcement  
8 officers apprehended a defendant they seized evidence from him.  
9 Evidence obtained from those searches where it was admitted in  
10 evidence in this case and may properly be considered by you.  
11 Whether you approve or disapprove of the methods by which this  
12 evidence was obtained should not enter your deliberations.

13 The government's use of this evidence is lawful. You  
14 must regardless of your personal opinions, consider this  
15 evidence along with all the other efforts in the case in  
16 determining whether the government has proved the defendant's  
17 guilt beyond a reasonable doubt.

18 (Continued on next page)

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1                   THE COURT: (Continuing) You also heard evidence of  
2 statements made by the defendant to the FBI. Evidence in these  
3 statements was properly admitted in this case and may properly  
4 be considered by you. We do not have any violation of  
5 anybody's rights, and the government may properly use this  
6 evidence. Whether you approve or disapprove of the use of such  
7 kinds of statements should not enter into your deliberations.  
8 You give the statements such weight, if any, as you feel they  
9 deserve in light of all the circumstances, but they're properly  
10 to be considered along with all the other evidence in the case.

11                  The defendant, Ali Kourani, did not testify in this  
12 case. Under our Constitution, a defendant has no obligation to  
13 testify or to present any evidence, because it is the  
14 government's burden to prove the defendant guilty beyond a  
15 reasonable doubt. That burden remains with the government  
16 throughout. It never shifts to a defendant. A defendant is  
17 never required to prove that he is innocent.

18                  You may not attach any significance to the fact that  
19 the defendant did not testify. You may draw no adverse  
20 inference against him. You may not consider this against the  
21 defendant in any way in your deliberations of this case.

22                  I said before, and I say again, the fact that the  
23 government is a party and that the prosecution is brought in  
24 the name of the United States does not entitle the government  
25 or its witnesses to greater or lesser consideration than that

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1 given to any other party. All parties, whether government or  
2 individuals, are equals before this Court.

3 We are finished now with the evidence. There are  
4 certain aspects of this that need to be mentioned as well.

5 Throughout the case, the lawyers objected or called  
6 for sidebars. That's their obligation. They have an  
7 obligation zealously to represent the interests that they  
8 represent. The Assistant U.S. Attorneys represent the  
9 government; the defense counsel represents the defendant. Each  
10 has an obligation zealously to present the case as best they  
11 can for their respective clients. That requires them to make  
12 various objections, seek various rulings, ask for sidebars, and  
13 the like. That should not be held against them. Nor are my  
14 rulings on their objections relevant in any way. These are  
15 matters of law, and they should not enter into your  
16 considerations.

17 And don't ask yourself if I like the lawyer or not or  
18 which lawyers I may have liked better. I have no opinion; I  
19 like all the lawyers. In any event, whether I like the lawyers  
20 or not is not part of this case, it's not part of the evidence;  
21 you should make no consideration about it.

22 From time to time I asked questions. My questions are  
23 no better than the questions of counsel for the parties.  
24 Sometimes my questions were objected to, sometimes I sustained  
25 those objections. It's the witnesses' answer, to whoever asked

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1 the questions, that constitute the evidence.

2           In determining the facts, rely upon your own  
3 recollections of the evidence. What the lawyers said -- in  
4 their opening statements, in their closing statements, in their  
5 objections or in their questions -- that's not evidence, the  
6 questions put to a witness is not evidence. Only the witness'  
7 answer, taken in the context and responsive to the question, is  
8 evidence, and anything I say during the trial or afterwards, or  
9 in any of these things, any of these exercises, that's also not  
10 evidence. These are instructions as to the law and they should  
11 give you no hint as to how to decide this case. That's your  
12 decision, not mine.

13           If you took notes during the course of the trial, you  
14 may bring them into the jury room to use them to assist you in  
15 your deliberations. They may not be used to help persuade  
16 another juror. These notes are private to you, and should not  
17 be used with respect to any other juror to persuade them or any  
18 other way.

19           If, during your deliberations, you have doubt as to  
20 what a witness said, you may ask for the repetition of that  
21 witness' testimony, in which case, the reporter will find it  
22 and we will send in transcripts to you. It may take some time  
23 to do that. Continue your deliberations along the way. But  
24 it's the transcriptions of the evidence in this case and the  
25 exhibits and the stipulations that count, not your notes.

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1           The lawyers will collect all the exhibits and have  
2 them available. So if you want something reread, focus on the  
3 particular part that you want reread. If you want an exhibit,  
4 focus on the particular exhibit that you want to see again.  
5 Don't ask for large groups of exhibits or large blocks of  
6 testimony. We are not going to redo this trial. We're now in  
7 the deliberations phase.

8           The question of possible punishment of the defendant  
9 should be of no concern to you. It should not enter into or  
10 influence your deliberations. It's my job to sentence  
11 defendants. It's your job to weigh the evidence in the case  
12 and to determine if the government proved the guilt of that  
13 defendant -- count by count, beyond a reasonable doubt --  
14 solely upon the evidence. Under your oath as jurors, you  
15 cannot allow a consideration of punishment that may be imposed  
16 upon any defendant, if that defendant is convicted, to  
17 influence your verdict in any way or to enter into your  
18 deliberations.

19           Nor are you to be swayed by sympathy. You're to be  
20 guided solely by the evidence in this case and not by any  
21 matter of sympathy or concern or any bias. There's no bias for  
22 or against the defendant or the government. It's the record of  
23 the facts.

24           A word about your deliberations:

25           Each juror is entitled to his or her opinion. Each

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1 juror, however, has the obligation to express his or her  
2 opinion in an effort to persuade other jurors who may feel  
3 differently. The very purpose of jury deliberations is to  
4 discuss and consider the evidence together, to listen to the  
5 arguments of fellow jurors, to present your individual views,  
6 to consult with one another, and to reach an agreement, a  
7 verdict, based solely and wholly on the evidence. Each of you  
8 must decide the case for yourself, after consideration of all  
9 the evidence in the case with your fellow jurors.

10 You should not hesitate to change your opinions if,  
11 after discussion with your fellow jurors, their view appears to  
12 be correct and yours did not. That's the purpose of  
13 deliberations. However, if, after carefully considering all  
14 the evidence and the arguments of your fellow jurors, you  
15 entertain a conscientious view that differs from theirs, you  
16 should stick to your conscientious view and not abandon it  
17 simply because you're outnumbered.

18 Your final vote is to reflect your conscientious  
19 conviction on how the issues should be decided. Your verdict,  
20 whether guilty or not guilty -- stick to your conscientious  
21 view even though you may be outnumbered, but listen to the  
22 others and be ready to be persuaded to another point of view if  
23 that seems to be the right thing to do. In any event, your  
24 verdict, guilty or not guilty, must be unanimous as to all  
25 elements of all the counts charged against the defendant in the

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1 indictment.

2 It would be improper for you to consider, in reaching  
3 your decision as to whether the government sustained its burden  
4 of proof, any personal feelings you may have about the personal  
5 characteristics of the defendant, such as his race, religion,  
6 national origin, sex or age. All persons are entitled to the  
7 presumption of innocence. Your verdict must be based  
8 exclusively upon the evidence and whether the government proved  
9 the case beyond a reasonable doubt.

10 You will begin deliberating when all the jurors are  
11 present and able to listen to each other's point of view. Do  
12 not begin before you are all present. You have to be together  
13 and reason as a jury, not separately.

14 Your first job should be to select a foreperson. By  
15 default, if you don't select, Juror No. 1 -- Juror No. 37, that  
16 is, sitting in the first seat -- will be the foreperson but the  
17 jury can elect anyone else. Whoever it is should be identified  
18 to me and counsel by a note passed out. I mentioned before, in  
19 your review of the evidence, perhaps you might want to hear  
20 evidence against or see an exhibit or have me say again what I  
21 told you in my charge or elaborate on it or answer questions  
22 about it. All of these come out by notes. Ms. Jones will give  
23 Juror No. 37 a stack of envelopes. You can use the sheets in  
24 your notebook for the notes.

25 In your notes, do not tell me what's going on in the

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jury. I do not want to know who might be a recalcitrant juror or an unwilling juror or an uncooperative juror, or what the other jurors want, or anything else about your deliberations. Your note is simply to ask me the question you want to ask, and that's the limit of it. Give me an note, sign it, date it, put it in an envelope, seal it, and you'll give it to the court security officer.

When you reach a verdict, the foreperson will sign the verdict sheet, after all questions are answered, and in the note to me, simply say the jury has reached a verdict. Carry in the verdict sheet with you, and in open court you will then announce your verdict. And, of course, don't tell me what it is in the note.

I have covered everything I need to cover, but I'm asking you to stay seated for a few minutes, and I will see the lawyers at the sidebar.

(Continued on next page)

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1 (At the sidebar)

2 THE COURT: Any objections or comments from the  
3 government?

4 MS. HOULE: No, your Honor.

5 THE COURT: Any objections, other than you made  
6 before, or comments by the defense?

7 MR. SCHACHT: Yes, your Honor.

8 Other than what I made before, on page 84, in the  
9 section entitled "Use Of Evidence Obtained In Searches And  
10 Interviews," you removed, I think, the word "allegedly" and you  
11 said that certain statements were made by my client. In the  
12 instructions it says --

13 THE COURT: I took out the word "allegedly"?

14 MR. SCHACHT: You took out the word "allegedly," I  
15 think.

16 MS. HOULE: Your Honor, you --

17 THE COURT: Well, there's no issue that he made the  
18 statements. You said he made the statement, the government  
19 said --

20 MR. SCHACHT: I said he made, certainly, some  
21 statements. I didn't go through every single statement, saying  
22 which he said, which he didn't say.

23 THE COURT: I'm glad to repeat that and say  
24 "allegedly."

25 MR. SCHACHT: Thank you.

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1 MS. HOULE: Just to be clear, your Honor, the  
2 instruction that you gave said, you have heard evidence of  
3 certain statements. You didn't say that the defendant made  
4 those statements. You said --

5 THE COURT: I think I did, I think I did. But whether  
6 I did or didn't, it doesn't harm to do it again.

7 MS. HOULE: My understanding, your Honor, is that  
8 you're going to read that entire paragraph again, then?

9 THE COURT: I think that's the right thing to do.

10 MR. SCHACHT: That's fine.

11 THE COURT: Okay.

12 After that, I have to dismiss the alternates. It's my  
13 practice to dismiss them and not have them stand by. So I'll  
14 do that and thank them for their services, and then we'll swear  
15 the court security officer, and the jury can begin its  
16 deliberations.

17 MR. SCHACHT: That's fine with me. Thank you.

18 THE COURT: Okay?

19 MS. HOULE: Thank you, your Honor.

20 (Continued on next page)

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1 (In open court)

2 THE COURT: Counsel have advised me that in  
3 instructing you with regard to evidence obtained in searches  
4 and seizures, I was incomplete. I think I said that, or may  
5 have said that, the defendant gave statements. It's the  
6 government's charge that he -- it's the government's contention  
7 that he made statements. The question whether he made  
8 statements and what use to make of them is your decision. I'll  
9 reread that section of the instructions.

10 You have heard testimony about evidence seized in  
11 various searches, including testimony that when law enforcement  
12 officers apprehended the defendant, they seized evidence from  
13 him. Evidence obtained from those searches was admitted into  
14 evidence in this case, and may properly be considered by you.  
15 Whether you approve or disapprove of how it was obtained should  
16 not enter into your deliberations. The government's use of  
17 this evidence is entirely lawful. You must, therefore,  
18 regardless of your personal opinions, consider this evidence  
19 along with all the other evidence in the case, in determining  
20 if the government has proved the defendant's guilt beyond a  
21 reasonable doubt.

22 You also have heard evidence of statements allegedly  
23 made by the defendant to the FBI. Evidence of these statements  
24 was properly admitted in this case, and may properly be  
25 considered by you. No one's rights were violated, and the

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1 government's use of this evidence is lawful. Whether you  
2 approve or disapprove of the use of these statements may not  
3 enter into your deliberations. Ultimately, you are to give the  
4 statements such weight, if any, as you feel they deserve in  
5 light of all the circumstances.

6 Are both counsel satisfied?

7 MS. HOULE: Thank you, your Honor.

8 MR. SCHACHT: Yes, your Honor.

9 THE COURT: I now have an unpleasant duty. By law, a  
10 jury in a criminal case has to be made up of 12 people. It's  
11 our practice to have alternates because during the course of a  
12 case, in many cases, things come up and a juror may have to be  
13 excused and the existence of an alternate allows us to continue  
14 without suffering a mistrial. But at the point of  
15 deliberations, the jury can only be 12.

16 So I have to excuse Jurors No. -- seated in seats 13  
17 and 14, Jurors No. 14 and 59. I want to thank you for the  
18 close attention that you've given to this case and your  
19 contribution as part of this jury, to hear it, and to pay  
20 attention, and to enable us to go forward without fear of a  
21 mistrial. Thank you very much. Ms. Jones will direct you  
22 where to go. You'll give her your books, she'll take them, and  
23 she will destroy your notes.

24 Wait a minute, Jurors Nos. 14 and 59. Your oath of  
25 secrecy should continue until there is a verdict. You can work

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1 out with Ms. Jones how to hear about the verdict, but you are  
2 to remain entirely secret about what happened. That would  
3 compromise the jury's verdict, if you were not to be secret.  
4 Don't talk with anyone about the case.

5 (Alternate jurors excused)

6 THE COURT: It's a quarter of 5:00. How long do you  
7 want to go? How long do you want to deliberate tonight?

8 (Pause)

9 JUROR: It's been a long day. We should start fresh  
10 in the morning. That way --

11 THE COURT: So why don't you deliberate for five  
12 minutes.

13 JUROR: Okay.

14 THE COURT: At least identify your foreperson.

15 JUROR: Okay.

16 THE COURT: And then come back at 10:00 o'clock  
17 tomorrow morning.

18 JUROR: Can we agree to come back earlier if it works  
19 for the jury?

20 THE COURT: Yes. What time would you like to come  
21 back?

22 JUROR: I don't know. I have to talk to the other  
23 jurors.

24 THE COURT: Do it now.

25 (Discussion off the record)

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1                   JUROR: 10:00 o'clock it is. Thank you, your Honor.

2                   THE COURT: Ten of 5:00, with deliberations, is hard  
3 work. As soon as Ms. Jones comes back, we will swear the court  
4 security officer, and then you can retire and begin to  
5 deliberate.

6                   Ms. Jones will now swear the court security officer.

7                   (Court security officer sworn)

8                   THE COURT: The jury may retire.

9                   The record will show that the foreperson,  
10 Juror No. 37, was given the verdict form and some envelopes.

11                  You may retire.

12                  (Jury retired to deliberate at 4:45 p.m.)

13                  THE COURT: Okay. We are recessed.

14                  MR. SCHACHT: We're recessed for five minutes or for  
15 the night?

16                  THE COURT: For the night.

17                  MR. SCHACHT: Thank you.

18                  MS. HOULE: I thought, your Honor, that they were  
19 going to send out a note in a moment to indicate --

20                  THE COURT: We'll find out in the morning.

21                  You want to wait? Wait. It's okay.

22                  MS. HOULE: I think we prefer to wait. Thank you,  
23 your Honor.

24                  THE COURT: The verdict form given to the jury made  
25 slight changes in questions 6 and 7. The way it had been

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1 worded was: "Did Count Five involve a machine gun?"

2 And, "Did Count Five involve a destructive device?" I  
3 was concerned that literally questioned whether the allegations  
4 contained these words. So we changed it to read: "6. Did  
5 your finding under Count Five involve a machine gun?"

6 "7. Did your finding under Count Five involve a  
7 destructive device?"

8 And that was the form we gave to the jury.

9 MS. HOULE: Understood, your Honor. Thank you.

10 MR. SCHACHT: Thank you.

11 (Pause)

12 THE COURT: There's no point in staying.

13 MR. BOVE: Thank you, your Honor.

14 MR. SCHACHT: Understood, your Honor. Thank you.

15 (At 4:52 p.m. a note was received from the jury)

16 THE COURT: The note reads: "Juror No. 2 will be the  
17 foreperson." That is, Juror No. 41.

18 MR. SCHACHT: Thank you.

19 (Adjourned to May 16, 2019 at 10:00 a.m.)

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